TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 318 41

JOHN W. RAST, TAX COLLECTOR FOR DUVAL COUNTY, STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

VAN DEMAN AND LEWIS COMPANY, THE HARKISHEIMER COMPANY, J. S. PINKUSSOHN CIGAR COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 26, 1913.

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1 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwannee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P.
2 Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Col-

lector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley,
4 Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida;
G. W. Hinsey, Tax Collector for Franklin County, State
5 of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; C. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durrance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

To the Honoroable Rhydon M. Call, Judge of the District Court of the United States for the Southern District of Florida, in Chancery:

The Complainants, Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida, a citizen of the State of Florida and a resident of the said Southern District of Florida, having its principal place of business in the City of Jacksonville, Duval County, Florida, and having a branch place of business in the City of Miami, in Dade County, Florida; The Harkisheimer Company, a corporation organized and existing under
the laws of the State of Florida, a citizen of the State of
6 Florida and a resident of the Southern District of Florida,
having its principal place of business in Jacksonville, in Duval County, State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina, a citizen of the State of South Carolina, but having a place of business and doing business in said Southern District of Florida, in the city of Jacksonville, in Duval County, State of Florida, and also having a place of business and doing business in the City of Pensacola, in Escambia County, State of Florida; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida, a citizen of the State of Florida and a resident of said Southern District of Florida, having its principal place of business in the City of Jacksonville, in Duval County, State of Florida; Joseph R. Mickler, a citizen of the State of Florida and a resident of the Southern District of Florida, residing and having his principal place of business in the City of Tampa, in the County of Hillsborough, in the State of Florida; and Eli Witt, a citizen of the State of Florida and a resident of the said Southern District of Florida, residing and having his principal place of business in the City of Tampa, in the County of Hillsborough, in the State of Florida, bring this their Bill of Complaint, on behalf of themselves and others similarly situated, who have a general interest in the subject of the action and in obtaining the relief demanded or prayed herein and to whom the questions involved herein are of general interest, and who constitute a class so numerous as to make it impracticable to bring them all before the Court, against, John W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallowes, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector
for Marion County, State of Florida; John L. Branch, Tax
7 Collector for Hillsborough County, State of Florida; George
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for Suwannee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggers, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of

8 Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jenkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; all of whom are citizens of the State of Florida and residents of the Southern District of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida;

H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. L. Lanfston,
9 Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Alton C. Hendry, Tax Collector, Taylor County, State of Florida; W. G. Durrance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida; all of whom are citizens of the State of Florida and residents of the Northern District of Florida; and thereupon Complainants complain and allege:

I.

That the said complainants are engaged in business as follows, to-wit:

Said Van Deman and Lewis Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise namely the business of a wholesale grocer buying and selling wholesale groceries and such articles of merchandise as are commonly and usually dealt in by a wholesale grocer and having its principal place of business, offices, store and warehouse in the City of Jacksonville, County of Duval and State of Florida, with a branch establishment, store and warehouse in the City of Miami, County of Dade, State of Florida and doing such business and selling such groceries and merchandise to customers over and in large portions of the State of Florida including the counties of Duval, Dade, Marion and many other counties of said State.

That said complainant Harkisheimer Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a retail merchant and buying and selling
10 merchandise namely the business of a retail grocer buying and selling groceries and such articles of merchandise as are commonly or usually dealt in by a retail grocer and having its place of business office and store in the City of Jacksonville, County of Duval and State of Florida, and doing such business and selling such groceries and merchandise to customers at and from its said store.

That said complainant J. S. Pinkussohn Cigar Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is

carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale and retail merchant buying and selling cigars, cigarettes, smoking tobacco, chewing tobacco and such articles of merchandise as are commonly or usually dealt in by a tobacco merchant, and having offices and a number of stores to-wit, four stores in the said City of Jacksonville and one store in the City of Pensacola in the County of Escambia in the State of Florida, and doing such business and selling such merchandise to customers at and from its said stores.

That said complainant The Forsyth Company was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale and retail merchant buying and selling cigars, cigarettes, smoking tobacco, chewing tobacco and such articles of merchandise as are commonly or usually dealt in by a tobacco merchant, and having its place of business and office and store in the City of Jacksonville, County of Duval and State of Florida, and doing such business and selling such merchandise to customers at and from its said store.

That said complainant Joseph R. Mickler was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a retail merchant and buying and selling merchandise, namely the business of a retail grocer, buying and selling

11 groceries and such articles of merchandise as are commonly or usually dealt in by a retail grocer, and having his place of business, office and store in the City of Tampa, Hillsborough County, State of Florida, and doing such business and selling such groceries and merchandise to customers at and from his said store.

That said complainant Eli Witt was long before the passage of or enactment of the Statute of the State of Florida hereinafter mentioned and still is engaged in and was and is carrying on the business of a merchant and buying and selling merchandise, namely the business of a wholesale grocer buying and selling wholesale groceries and such articles of merchandise as are commonly or usually dealt in by a wholesale grocer and having his principal place of business, office, store and warehouse in the City of Tampa, County of Hillsborough and State of Florida and doing such business and selling such groceries and merchandise to customers over and in large portions of the State of Florida including the County of Hillsborough and in many of the counties of said State.

II.

That the said complainants and each of them in carrying on their respective business in said state and in said counties and cities as hereinbefore mentioned have bought, sold, offered for sale and dealt in various and numerous articles of merchandise in their respective lines of business, which are manufactured or produced in states of the United States of America other than the State of Florida by persons and corporations in such other states, and are shipped by such

persons and corporations from such other states into the State of Florida to be sold and dealt in in the State of Florida, said transactions being interstate commerce between different states of said United States. That a great many of such manufacturers and producers of various lines of merchandise so manufactured and produced in states of the United States other than the State of Florida, and which are shipped into the State of Florida, as aforesaid,
12 do for the purpose of advertising their business and increasing the volume of their sales enclose in the packages in which said merchandise is put up for market and sale coupons, slips, certificates and other profit-sharing discount or premium tokens, including among others the following articles manufactured in or shipped from the several places hereinafter mentioned by the several persons and corporations hereinafter mentioned: Celluloid Starch by Celluloid Starch Company, New York, New York; Octagon Soap by Colgate and Company, New York, New York; Santa Claus Soap by N. K. Fairbanks Company, Chicago, Illinois; Export Soap, Pearl Soap, Everywomans Soap, Grandmas Wash Powder by Globe Soap Company, Cincinnati, Ohio; Coaline Soap by Manhattan Soap Company, New York, New York; 20 Mule Team Borax by Pacific Coast Borax Company, New York, New York; 3 in 1 Oil by Three in One Oil Company, New York, New York; Sterling Ball Potash, Rumford Baking Powder by H. M. Anthony Company, New York, New York; Good Luck Baking Powder by Southern Manufacturing Company, Richmond, Virginia; Purity Oats by Purity Oats Company, Keokuk, Iowa; Arbuckles Coffee by Arbuckle Brothers, New York, New York; Luzianne Coffee by Reily Taylor Company, New Orleans, Louisiana, Argo Starch by National Starch Company, New York, New York; Electro Silicon by Electro Silicon Company, New York, New York; Drugs and Extracts by McCormick and Company, Baltimore, Maryland; Cigarettes and Tobaccos by Liggett and Meyers Tobacco Company, St. Louis, Missouri, by S. Anorgyros, Jersey City, New Jersey, by Markoroff Cigarette Company, Boston, Massachusettes, by American Tobacco Company, New York, New York; Cigars by I. Lewis Cigar Manufacturing Company, Newark, New Jersey, and by Federal Cigar Company, Jersey City, New Jersey; Syrups by Dunbar Syrup and Molasses Company, New Orleans, Louisiana; Syrups by Towles Maple Product Company, St. Paul, Minnesota; Soaps by Swift and Company Soap Works, Chicago, Illinois; Obelisk Flour by Ballard and Company, Louisville, Kentucky; None Such Mince
13 Meat by Merrill-Soule Company, Syracuse, New York; and many other articles of merchandise manufactured by many other persons and companies.

III.

That the manner or method of disposing of and redeeming, taking up or paying such coupons, slips, certificates or other tokens is that the same are enclosed in packages or the wrappers thereof, or are a part of the wrappers thereof, such packages are put in boxes, cases or other receptacles or enclosures and shipped by the manufacturer or producer from his place of business out of the State of Florida,

as aforesaid, to the merchant in the State of Florida, generally to a wholesale merchant or jobber, and such boxes, cases or enclosures containing such packages with coupons, certificates or the like, as aforesaid are received by the wholesale merchant or jobber in Florida and sold to the retail merchant in said State. The retail merchant generally opens the said boxes, cases or enclosures containing such packages with coupons, certificates or the like and sells them to his customers. The customer takes such coupons, certificates or the like out of such articles or packages, or from the wrappers thereof, and when he has accumulated a sufficient number of them to entitle him to receive a premium or article or payment therefor, according to some list, catalogue or rules, promulgated by the manufacturer or the producer making or shipping the article from without the State of Florida, he sends such coupons, certificates or the like to such manufacturer, producer or original shipper of the article, out of the State of Florida, or, in some instances, to a company or agency in some State of the United States outside of the State of Florida, and such coupons, certificates or the like are redeemed or paid or the article which such purchaser has selected from such list, catalogue or the like is sent to him, in consideration of and for such coupons, certificates or the like, or for the same and a postage stamp or stamps, or a small sum of money in addition thereto. In all such cases the coupons, slips, certificates or tokens are put in the articles or in the wrappers thereof, or are a part of the wrappers thereof, by the manufacturer, producer or shipper in a State of the United States, outside of the State of Florida, and shipped into the State of Florida to be delivered by the merchant in Florida selling the articles to the purchaser thereof, and entitling the purchaser thereof, upon a contract, agreement, or sale made to him by the manufacturer, shipper or producer outside of the State of Florida, that upon such purchaser buying such merchandise, made shipped or sold by such manufacturer, shipper or producer outside of the State of Florida, and shipped into Florida, as aforesaid, that upon the return by such purchaser of a certain number of such coupons, certificates or the like to such manufacturer, producer or shipper, in a State of the United States outside of the State of Florida, or upon the return of such coupons, certificates or the like with the addition of a postage stamp or stamps or a small sum of money, that such manufacturer or producer will sell or exchange therefor some article of merchandise of value selected by such purchaser from a list or catalogue, as aforesaid, and will ship or send such article from such place outside of the State of Florida to such purchaser in the State of Florida.

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Complainants are advised and allege that all said transactions, not only the sale and shipment by the manufacturer or producer from outside of the State of Florida, as aforesaid, to the wholesaler or jobber in the State of Florida, as aforesaid, of boxes, cases or receptacles containing packages which contain or have in the wrappers such coupons or certificates or the like, as aforesaid, and the sale of such boxes, cases or receptacles by the wholesaler or jobber to the retail merchant, but, also, the sale by the retail merchant to his

customers of the packages containing or having in the wrappers, or otherwise attached thereto, such coupons, certificates or the like, and the sending or returning by such purchasers of such coupons, certificates or the like, or of the same with the addition of postage
15 stamp or stamps or of a small sum of money, to the manufacturer, producer or shipper, who shipped or sent the same from a State outside of the State of Florida, as aforesaid, or to a redemption or premium agency, company or establishment in a State of the United States outside of the State of Florida, is an interstate commerce.

That the form of such coupons, certificates, slips or tokens varies and there are many different kinds of the same, as, for instance, one consists of a fac-simile of the signature of the firm manufacturing or shipping the article, which appears upon the wrapper of the package and evidences that the purchaser of the package has bought a definite part of some article, to be selected by him or her from a certain list, subject only to the condition that the signature on the package is to be cut out and returned to the manufacturer or shipper as a voucher, in accordance with printed directions, and the list shows a number of valuable articles of merchandise which can be paid for by a certain number of said signatures and a two cent stamp; another form is where there is a certain word or name of the article on the wrapper and the purchaser by cutting out such word or name and sending a certain number of the same to the manufacturer or shipper of the article and designating the premium which such person desires from a list, issued by such manufacturer or shipper, gets such premium article therefor; another form is where the coupon or certificate of a redemption or coupon agency or corporation is enclosed by the manufacturer or shipper of the article in the package and the purchaser upon opening the package takes out such coupon or certificate and when he has accumulated a certain number thereof sends the same, to a State outside of the State of Florida, to such redemption or coupon agency or corporation and exchanges the same for, or purchases with the same, a valuable article of merchandise which the purchaser selects from a list or catalogue that is furnished him; another form of such coupons, slips, certificates or tokens is where each of the same is good for a certain value, for instance, one-half cent in presents or premiums, the purchaser
16 sending the same on to the manufacturer or shipper from Florida to another state, as aforesaid, and purchasing a valuable article of merchandise and paying for the same with such coupons or certificates at the valuation that is affixed to the same and selecting the article from a catalogue or list. There are, also, other forms and methods of and in connection with such coupons, slips, certificates or tokens used in connection with the selling or shipping of merchandise from other States of the United States into the State of Florida and the sale of the same, as aforesaid, and the sending of such coupons, slips, certificates or tokens from the State of Florida to other States to be redeemed, paid for or used in the purchase of other articles of merchandise or in the accumulation of premiums or the like. All the articles of merchandise with which

such coupons, slips, certificates or other tokens are so shipped or used are well known and generally or frequently or largely used and legitimate articles of commerce. And all such transactions and all such coupons, slips, certificates and tokens and the use thereof is, as complainants are advised and so allege, interstate commerce.

IV.

Complainants further allege that there are divers forms and methods of use of coupons, slips, certificates or tokens, in connection with the sale of merchandise used by merchants of the State of Florida, substantially in similar form to those mentioned above, in which above mentioned cases the payment or redemption in premiums is made or given outside of the State of Florida, but in the class of cases now being stated the payment or redemption is made by the Florida merchant, in the State of Florida, sometimes by the delivery of some valuable article of merchandise; sometimes by the payment of cash or the allowance of credit on account of purchase being in the nature of a discount or for or on account of a certain amount having been purchased of the merchant by the customer.

These certificates or tokens in addition to being in the forms
17 of coupons or certificates, as above mentioned, sometimes are in the form of a cash register slip or memorandum and are in various other forms.

V.

Complainants further allege that each of the said complainants in its or his line of business, as aforesaid, has been, long prior to the enactment of said Statute and still is, engaged in selling and delivering to customers the articles of merchandise above mentioned and various other articles of merchandise such as are sold and dealt in in the said line of business of each of said Complainants, respectively, with coupons, slips, certificates or other tokens such as are hereinabove mentioned or described and others of similar character, although varying in detail.

That the use of such coupons, slips, certificates or other tokens are methods of advertising the several articles of merchandise or of advertising the several businesses of the several Complainants and also advertising the businesses of the manufacturers, shippers or producers outside of the State of Florida, who ship such several articles with such coupons, slips, certificates or other tokens into the State of Florida, as aforesaid. Also the use of such coupons, slips, certificate or other tokens, as aforesaid, induces purchasers to trade more largely with and to make more of their purchases from Complainants on account of the additional inducements of such coupons, slips, certificates or other tokens, and the same increase the businesses of Complainants, and their profits from their business and enable Complainants to carry and sell stocks of goods covering the various articles of merchandise with which such coupons, slips, certificates or other tokens are delivered, as aforesaid, and are of great importance and value to the said several Complainants in their said several businesses, and if they are prevented from so using or

delivering the same their said several businesses will be greatly reduced in the lines of merchandise carried and sold therein,
18 and in the amount of business done therein and in the receipts and profits thereof, and by the loss of customers, to-wit: to the amount of many thousands of dollars as to each of them. Also, each of said Complainants prior to and at the time of the enactment of such Statute had on hand and in their stocks of merchandise large amounts and quantities of such articles of merchandise which are sold and delivered with such coupons, slips, certificates or other tokens, as aforesaid, and the same was true at the time that said Statute took effect, as aforesaid, and is so at the present time, and if Complainants are or shall be prevented from selling and delivering such articles of merchandise with such coupons, slips, certificates or other tokens, as aforesaid, each of said Complainants will be subjected to great loss and damage and much hindered, embarassed and injured in their businesses and the value of their said property on hand, as aforesaid, will be destroyed or greatly lessened.

VI.

That by the use of the system of delivering such coupons, slips, certificates or other tokens with merchandise sold, the merchant is enabled to give a discount to purchasers or to give an additional value to purchasers in the shape of the premiums or articles sold for or exchanged for such coupons, slips, certificates or other tokens, and the purchasers of such articles of merchandise are substantially benefited thereby.

VII.

Complainants further allege that in the issuance, redemption or payment of such coupons, slips, certificates or other tokens, or in the sale of articles therefor or for the same in connection with stamps or cash payments and any use of the same or any of the matters or things done in connection with the same there is no element of gambling or chance, and there is nothing in the same or connected therewith or in the manner in which such coupons,
19 slips, certificates or other tokens are used, issued, paid, redeemed or disposed of, and there is nothing in the method of advertising or conducting business in connection therewith or in the use of the same that is prejudicial to public health, safety, morals or welfare.

VIII.

That divers of said Complainants have delivered to many of their customers with articles sold to them many such coupons, slips, certificates or other tokens, but where the customers have not accumulated a sufficient number of such coupons to have them redeemed in or purchase with them or receive premiums on account of them of articles, as aforesaid, but upon the understanding and expectation that such Complainants should continue to sell them such articles and deliver therewith such coupons, slips, certificates or other tokens so that such several customers should be able to accumulate sufficient numbers thereof to have the same paid or redeemed or to ac-

quire such articles therefor, as aforesaid, and if Complainants are prevented from continuing to sell such articles of merchandise and to deliver such coupons, slips, certificates or other tokens, as aforesaid, in connection therewith, they will be unable to deliver to such purchasers and customers sufficient numbers thereof, as aforesaid and such purchasers and customers will be unable to get the same redeemed or paid or to acquire articles therewith, as aforesaid.

IX.

Complainants further allege that the same facts and all of the facts hereinabove stated are true as to many other merchants doing business in the State of Florida and being in the same position and condition in the premises and having like rights and interests and being subject to like losses, injuries and damages as Complainants, to wit, as Complainants are informed and believe and so allege, about five thousand merchants of the State of Florida.

20 X.

The certificates or tokens commonly called trading stamps and so designated in said Statute are substantially like some of the kinds of coupons or certificates hereinabove mentioned and described. Said trading stamps bear a resemblance in form and appearance to a stamp and when used they are delivered to purchasers by retail merchants with the various articles of goods sold to such purchasers and with such trading stamps such purchasers are entitled to purchase or receive various valuable articles of merchandise according to a list or catalogue upon presentation of the stamps to some person or company that has issued such trading stamps and that redeems the same or sells for the same the articles that may be selected by the purchaser according to the provisions of such list or catalogue.

XI.

That at the last session of the Legislature of the State of Florida, held during the year 1913, a statute was enacted, to wit: Chapter 6421 of the Laws of the State of Florida, entitled "An Act Imposing Licenses and Other Taxes, Providing for the Payment Thereof, and Prescribing Penalties for Doing Business Without a License, or Other Failure to Comply With the Provisions Thereof," which Act was approved by the Governor of said State June 5th, 1913. That said Legislature of the State of Florida did adjourn, to wit: on the 6th day of June, A. D. 1913, and said Statute took effect upon the expiration of Sixty Days from said final adjournment of said session of the Legislature at which it was enacted as aforesaid. That Section 35 of said Statute reads as follows:

"SECTION 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:

For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half

($1.50) dollars for each additional thousand or fraction
21 thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half ($1.50) dollars for each one thousand ($1,000.00) dollars of their stock of merchandise. Provided, That the words "stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

Provided further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of Five Hundred ($500.00) dollars and a County license tax of two hundred and fifty ($250.00) dollars in each and every County in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and County license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this Section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this Section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00) dollars or by imprisonment in the County jail not exceeding six months.

Mercantile Agencies: Shall pay a license tax of one hundred ($100.00) dollars in each County in which an office is established.

Merchants using trading stamps, shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

22 Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

XII.

That in said Section of said Statute of the State of Florida it is enacted, as hereinbefore set forth, that every person, firm or corporation shall pay a state license tax of $500.00 a year and a county license tax of $250.00 a year in each and every county in which said business is conducted or carried on, offering with merchandise bargained or sold any coupon, profit-sharing certificate or other evidence of indebtedness or liability redeemable in premiums and requiring every person, firm or corporation who shall offer with merchandise bargained or sold, as aforesaid, any such coupon, profit-

sharing certificate or other evidence of indebtedness or liability redeemable by any other person, firm or corporation, to pay like license taxes for each other person, firm or corporation who may redeem the same. That by the provisions of said Section of said Statute every person, firm or corporation doing business in Florida and using any coupon, profit-sharing certificate or other evidence of indebtedness or liability, as therein mentioned is required not only to pay such license taxes for itself, but to pay such license taxes for every other person, firm or corporation who may redeem any such coupon, profit-sharing certificate or other evidence of indebtedness or liability, as aforesaid, and is thereby required to pay said license taxes for every one of the great number of persons, firms or corporations whose goods or merchandise are sold or delivered with any coupon, slip, certificate or token or evidence of indebtedness or liability, as aforesaid. That by the provisions of said Statute and said Section thereof said license taxes are most unreasonable, enormous and prohibitive. They not only require the payment of $750.00 per year or the half of that amount for six months of less, by each complainant and all other persons in like circumstances for each place of business of such Complainant or other persons and for each county in which such business is conducted or carried
23 on, but they also require each of said Complainants and every other person in like circumstances to pay like amounts for every person, firm or corporation, any of whose goods or merchandise may be sold or offered by any of said Complainants or any such other person with any such coupon, slip, certificate or token, or evidence of indebtedness or liability therein or attached thereto or delivered therewith. Complainants allege that each of them sells and offers for sale many, to wit, twenty or more of such articles, goods or merchandise manufactured or produced by some other person, firm or corporation, to wit, by twenty or more persons, firms or corporations and with coupons placed in or attached to or delivered with such various articles of goods or merchandise, if redeemable by another different firm or corporation, and that by the provisions of said Statute Complainants and every other person in like situation are required to pay such license taxes for every one of said other firms or corporations, and that in case there are twenty or more of the same, as hereinabove mentioned, each of Complainants and each and every other person in like situation would be required to pay for license tax to the state and for one county or one place of business alone $15,000 per year or one-half of that amount for six months or less time.

Said Statute by the provisions of said Section also requires every person, firm or corporation who may redeem any such coupon, slip, certificate, token or other evidence of indebtedness or liability including every person, firm or corporation manufacturing or producing any goods or merchandise and shipping the same into the State of Florida from any other State of the United States, as aforesaid, and any other person, firm or corporation other than the merchant offering and selling the goods in Florida, as aforesaid, redeeming or who may redeem any such coupon, slip, certificate, token or other

evidence of indebtedness or liability, to pay said amounts of license taxes for, by and through each and every person, firm and corporation in Florida offering or selling any goods and merchandise of any manufacturer, producer or shipper or other person, firm or corporation.

24 That the good and merchandise of each of said manufacturers, producers or shippers, hereinabove mentioned, in this Bill of Complaint as being sold, offered or delivered with such coupons, slips, certificates or tokens, as aforesaid, and the goods and merchandise of many other manufacturers, producers and shippers of goods and merchandise shipped from other states of the United States into the State of Florida, are received, brought, kept in stock and delivered by many merchants in the State of Florida, to-wit, by several thousands of merchants in the State of Florida, and said Statute requires each of said manufacturers, producers or shippers to pay by, for and through each such merchant, person, firm or corporation so selling or offering for sale any of such goods and merchandise of any and every such manufacturer, producer or shipper the sum of $750.00 per year for each place of business of such person, firm or corporation in Florida and $250.00 for each additional county in which such business is conducted or carried on, which would amount, if payment was so made for only 100 of such persons, firms or corporations in Florida, to $75,000 per annum, and if payment were made for 1,000 of such persons, firms or corporations in Florida, for one place of business to $750,000, and so on as to any number to be paid by and for each and every of such manufacturers, producers or shippers.

XIII.

That such coupons, slips, certificates or tokens are enclosed in packages of tobacco products as hereinbefore mentioned which packages are delivered unbroken to complainants' customers of goods of various manufacturers and producers of tobacco products hereinbefore mentioned and other such manufacturers and producers; and said coupons, slips, certificates and tokens so contained in such packages and so delivered are authorized and rendered lawful by section 3394 of the revised statutes of the United States as amended by the tenth section of the Act of July 24th 1897 as further amended by the second section of the Act of July 1st, 1902, of the Statutes of the United States.

XIV.

25 Complainants and each of them allege and charge that said provisions of the Statute of the State of Florida and all and every of them concerning the offering with merchandise bargained or sold any coupons, profit-sharing certificates or other evidence of indebtedness or liability or slip token or trading stamp contained in said Section 35 of said Statute and all provisions and enactments thereof for the prosecution, conviction and punishment or any of them of any person therefor or concerning same are con-

trary to and in violation of the Constitution of the United States of America and are unconstitutional, null and void upon and because of the facts and grounds in this Bill of Complaint hereinbefore stated and also the facts and grounds hereinafter stated to-wit:

(1.) That said Statute in the said enactments and provisions thereof undertakes and attempts to and if it be permitted to be enforced or given effect will regulate, hinder, restrain, prohibit and destroy interstate commerce between the several states of the United States, to-wit, between states of the United States other than the State of Florida and the said State of Florida contrary to and in violation of the Commerce clause of the Constitution of the United States, to-wit, the third clause of section eight of article one of the Constitution of the United States of America.

(2.) That said Statute in the enactments and provisions thereof undertakes and attempts to, and if it be permitted to be enforced and given effect will abridge the privileges and immunities of Complainants and other citizens of the United States, and will deprive Complainants and other Citizens of the United States of Liberty and property without due process of law, and will deny to Complainants and to other citizens of the United States within the jurisdiction of said State, the equal protection of the laws, contrary to and in violation of the Fourteenth Amendment, to-wit,
26 Article XIV of the Constitution of the United States of America, and more particularly said Statute and the enactments and provisions thereof are more especially contrary to, and in violation of, said Fourteenth Amendment to the Constitution of the United States in the following particulars:

(A) That the classification made or attempted in said Statute upon which said enactments and provisions for the payment of said license taxes herein complained of are made or based, is arbitrary and discriminating, and not based upon any just distinction between merchants engaged in similar lines of business and in competition therein.

(B) Said Statute and said provisions and enactments thereof attempt to impose upon merchants who advertise their business in a certain manner, or who offer certain premiums, discounts, profit sharing certificates, or like inducements to their customers to trade with them, or to buy goods or merchandise which they produce, or sell, said unreasonable, exhorbitant, discriminating and prohibitory license taxes not imposing the same upon other merchants in the same or similar lines of business, who do not use said forms of advertising, or offer premiums, discounts, profit-sharing certificates, or like inducements to their customers to trade with them, or to buy goods or merchandise which they produce or sell, but who use other forms of advertising or make other inducements to their customers, and said license taxes are not based upon any substantial or actual differences in such business or occupations, or actual or substantial grounds of classifications in the premises.

(C) That the said annual and semi-annual license taxes complained of, and imposed by said Statute, are not taxes upon the

businesses or occupations of said Complainants and others similarly situated, but are unlawful attempts to levy annual or semi-annual license taxes upon mere incidents of said businesses, and are unreasonable and illegal interferences with the method and manner of conducting the same.

27 (D) That said Statute in said Section thereof undertakes and attempts to impose upon and require of each of complainants and of every person similarly situated, that each such person, firm or corporation offering with merchandise bargained or sold, any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same, to pay the amounts of license taxes hereinbefore mentioned, for each other person, firm or corporation who may redeem the same, and it is thereby attempted to make one person, firm or corporation pay the license taxes of other persons, firms or corporations, and to levy upon, seize, take and dispose of the property of each of said complainants, and of every other person so situated as provided in said Section 35 of said Statute, and also in Section 59 of said Statute and elsewhere in said Statutes, and to fine, or imprison said complainants or their agents, and every other person and the agents of every other person similarly situated, in order to compel them to pay such license taxes of or for each such other person, firm or corporation.

(E) That said Statute by its said provisions and said license taxes hereinbefore complained of, deprives complainants and each of them, and every other person, firm or corporation in like situation, of their privileges, immunities and liberty and property, without due process of law, in as much as they or any of them cannot bestow a gift or give a premium, or a share of the profits of the business of each or any of them, by reason of the said provisions of the said Statute hereinbefore set forth, without paying said enormous, excessive and prohibitory license tax, whereby they are hindered, restrained and prevented from so doing, exercising, having and enjoying privileges, immunities, liberty and property, guaranteed and secured to them and each of them by said Article XIV of the Constitution of the United States of America.

(F) That said annual and semi-annual license taxes are unreasonable, arbitrary, oppressive, discriminatory and prohibitory in that they are far in excess of the amounts of taxes or licenses

28 fixed or imposed by said Statute of said State upon any other legitimate business or any other methods of advertising or inducing custom, or inducing persons to buy goods, wares or merchandise, and because it will prevent complainants and each of them, and persons, firms or corporations in like situation from carrying on or doing their legitimate businesses as aforesaid, and from selling any article of goods, wares or merchandise with such coupons, slips, profit-sharing certificates, or other evidences of indebtedness, or other tokens as aforesaid, the amounts of said license taxes being so great that they would take away and destroy all profit in so doing any such business or making any sales, and in many instances will cause actual loss of money and capital to and of complainants and each of them and other persons so doing.

(G) Said annual or semi-annual license taxes are prohibitory in that they impose financial obligations and burdens so great, and requiring the payment of such sums of money by and from complainants and all other persons in like situation for such incidents of their respective businesses, that said provisions for said license taxes are not productive of revenue, being in excess of the profits from said features of said businesses upon which they are imposed, and will prohibit and prevent complainants and all persons in like situation from doing the same.

(H) That said annual and semi-annual license taxes are so large, exhorbitant and excessive, that, while under the guise of a revenue measure, they will produce no revenue, and are in fact a prohibitory measure.

(I) That said annual or semi-annual license taxes, though under the guise of a revenue measure and taxation, are in fact not such, and are not imposed for the purpose of revenue or taxation, but are intended for the purposes of prohibiting and preventing the doing of business and the enjoying and disposing of property
29 and the exercising of the rights of property and of liberty, and of having the equal protection of the law to which complainants and all other persons in like situation are entitled and in which they are protected by said Article XIV of said Constitution of the United States of America.

(J) That said Statute in its said provisions is partial, unreasonable, oppressive, unequal, in restraint of trade, and prohibitory of lawful acts done in the conduct of lawful business, and is therefore violative of the liberty and rights of complainants and each of them and all other persons in like situation, guaranteed to them by the provisions of said Article XIV of the said Constitution.

(K) That the said methods and acts of complainants and each of them, and of all other persons in like situation, and of said manufacturers, shippers and producers hereinbefore mentioned and as hereinbefore described, in offering for sale and selling or delivering goods, wares or merchandise with coupons, slips, certificates or other evidences of indebtedness or liability, or like tokens, and in redeeming or paying the same or giving or selling articles in exchange therefor or for the same, and in all the other matters and things hereinbefore mentioned in the premises, in no way so affect the public health, safety, convenience, comfort, morals or welfare, as to be subject to police control or regulation by said State or the Legislature thereof, and the said provisions of said Statute and the said imposition of said license taxes are in no way a legitimate or lawful exercise of any police power of said State or of the Legislature thereof.

(L) That the penalties, fines and imprisonments provided in said Section of said Statute for the enforcement thereof, are so onerous, drastic and excessive and numerous, as to deter complainants from going on doing business in the premises as they have heretofore done, with reference to such coupons, slips, certificates, evidences of indebtedness and tokens as aforesaid, and testing the validity of said Statute and the provisions thereof in a court of law.

30 (M) That the fines and penalties imposed by said provisions of said Statute complained of, for the violation thereof, are so excessive and exhorbitant as to be confiscatory of the property of said complainants and each of them, were they or either of them to continue to carry on their businesses and to offer, sell or dispose of goods or merchandise with coupons, slips, certificates, evidences of indebtedness and such tokens, as aforesaid, for the purpose of testing the validity of the same in a court of law and should said law be held to be valid.

(N) That by said Statute and in Section 59 thereof, it is provided and enacted as to persons, firms or corporations generally that shall carry on or conduct any business or profession for which a license is required, without first obtaining such license, that such person, firm or corporation shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than double the amount required for said license, but in said Section 35 it is provided and enacted that for failure to pay any of the license taxes hereinbefore mentioned and complained of, any person, whether acting for himself or as the agent for another, may be imprisoned in the County jail, not exceeding six months.

XV.

Complainants and each of them further allege that said provisions of said Statute of the State of Florida, hereinbefore mentioned and complained of, are unconstitutional and void, being contrary to and in violation of the provisions of clause one (1), of section ten (10) of Article one (1) of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts, and said Statute impairs the obligation of contracts made with persons purchasing goods or merchandise with such coupons, slips, certificates, evidences of indebtedness or liability or like tokens, as mentioned in paragraph Eight of this Bill of Complaint.

31 ## XVI.

That said provisions for or concerning said license taxes of said Section 35 of said Statute of Florida, hereinbefore mentioned and complained of are unconstitutional and void in that they conflict with and attempt to nullify Section 3394 of the Revised Statutes of United States as amended by the 10th section of the Act of July 24th, 1897, further amended by the 2nd section of the Act of July 1st, 1902, which said Statute of the United States as amended, as aforesaid, was enacted as a means of carrying into execution the powers invested in the government of the United States in Section 8 of Article 1 of the Constitution of the United States and contrary to and in violation of the second clause of Article 6 of the Constitution of the United States, which provides and declares that the Constitution and laws of the United States which shall be made in pursuance thereof shall be the supreme law of the land; and the Judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary, notwithstanding.

XVII.

That said provisions, requirements, license taxes, impositions, fines and penalties of said Statute of the State of Florida, hereinbefore mentioned and complained of deprives complainants and each of them, and every person in like situation of rights of liberty and of having managing and disposing of property and of doing business such as belong to every person in every free country and such as belong to Complainants, and each of them, and every person in like situation, as citizens of or residing in the United States or the State of Florida, without being specifically mentioned in any constitution, by natural and inherent rights, or such rights as are recognized and assumed to exist without being specifically mentioned in the Constitution of the United States and the Constitution of the State of Florida and such rights as are mentioned or indicated by the Declaration of Independence of the United States and the Magna
32 Charta, and which are a part of the law of the land, and which are and will be protected by or enforced by the Courts.

XVIII.

That upon all the facts hereinbefore stated upon all the grounds hereinbefore stated, said provisions of said Statute of the State of Florida and all said requirements thereof for the payment of license taxes hereinabove mentioned and complained of are contrary to and in violation of the Constitution of the State of Florida and more particularly of Section 12 of the Declaration of Rights of said Constitution of the State of Florida which provides that no person shall be deprived of life, liberty or property without due process of law, nor shall property be taken without just compensation, and also of Section 1 of said Declaration of Rights which declares "All men are equal before the law, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing happiness and obtaining safety."

XIX.

Complainants allege that they and each of them have paid all license taxes due or payable by them, respectively, to the State of Florida, or any county thereof for doing and carrying on, or entitling them to do or carry on, the several businesses of each of them, other than the said license taxes, concerning any coupon, profit-sharing certificate or other evidence of indebtedness or liability mentioned in Section 35 of said Statute of Florida, and hereinabove mentioned and complained of.

XX.

Complainants allege that as to each of them the amount of said license taxes hereinabove mentioned and complained of required by said Section 35 of said State of Florida to be paid by each of
33 Complainants, is at the present time and aggregates more than $3,000.00, as to each of said Complainants, and also the damage and injury of the property, trade and business of each of said

Complainants in the premises, by reason of the provisions of said Section 35 of said Statute of the State of Florida, hereinabove mentioned and complained of will amount to more than $3,000.00 and that the matter in controversy in this suit as to each of said Complainants exceeds the sum or value of $3,000.00 exclusive of interest and costs. That this suit involves Federal questions, as herein stated, and the matters in controversy arise under the Constitution and laws of the United States as herein stated.

XXI.

Complainants further allege that under and by the Statutes of the State of Florida, and more particularly under and by section fifty-nine of said Statute covering licenses and other taxes, approved June 5th, 1913, and the provisions of which are hereinbefore complained of, the tax collector of each county is authorized and empowered to enforce the payment of all license taxes by the seizure and sale of property. That the comptroller of the State of Florida has issued statements and communications to divers of the tax collectors hereinbefore named and to the tax collectors of the State of Florida generally notifying and instructing them that there is now due and payable and collectable one half of each of said sums of Five Hundred Dollars ($500.00) for state license tax and one half of each of said sums of Two Hundred and Fifty ($250.00) Dollars for county license taxes for the time between the going into effect of said Statute to wit, August 6th, 1913, and the first day of October 1913, and that upon the first day of October 1913, there will be payable for the year from October 1st 1913, to October 1st, 1914, the additional sum of Five Hundred ($500.00) Dollars for every such state license tax and Two Hundred and Fifty ($250.00) Dollars for every such license tax for each and every county as provided and mentioned in said
34 section thirty-five of said statute and in this Bill of Complaint mentioned and set forth; and divers of the tax collectors of said state have issued statements, notices and circulars notifying complainants and other persons in like situation that said license taxes were and are due and payable as aforesaid and must be immediately paid to said tax collectors. That said tax collectors are threatening to and will immediately proceed to collect said license taxes from each of complainants and from all other persons in like situation and in order so to do will seize and sell the property of each of complainants and of every person in like situation, and will enter upon the stores and warehouses of each of complainants and of such other persons and will interrupt and interfere with their businesses and seize their stocks of wares, goods and merchandise, and will cause each of them loss of business, trade and customers, and will sell such property at forced sales and at sacrifices, and will greatly injure and damage the property and the business of each of said complainants, and of such other persons, and will not only cause loss and damage to each of them by reason of seizing and taking their property but will also on account of the peculiar character and uses of the property, to wit, their stocks of merchandise wherewith and whereby they exer-

cise, carry on and maintain their businesses and occupations, and the injury to their businesses and occupations and credit and loss of customers and because of the repeated and numerous seizures and sales of such property of complainants and each of them that will be made by such defendant tax collectors to collect such license taxes from them for the state and county from each place of business and in each and every county in which said business is conducted or carried on, and also for such license taxes from each and every other person, firm or corporation by whom any such coupon, certificate or other evidence of indebtedness or liability offered or sold in connection with any merchandise as hereinbefore stated may be redeemable, and such a multiplicity of litigation would be inflicted on and caused to each of said complainants and other persons by such pro-
35 ceedings, and the businesses and occupations aforesaid of each of said complainants and such other persons would be so interrupted, damaged and destroyed, and such tremendous amounts of moneys, costs and expenses would be inflicted upon them or collected out of them or their property seized and sold therefor by said defendant tax collectors as aforesaid, and the damages resulting would be so difficult or impossible of ascertainment and computation, that each of said complainants and such other persons have and would have no adequate remedy at law in the premises and can only have suitable or adequate relief in a court of equity.

XXII.

That said defendants State Attorneys, County Solicitors, and Prosecuting Attorneys for the several circuits and counties hereinbefore mentioned, are respectively authorized and empowered by the laws of said State of Florida to prosecute in the several courts of said State alleged violations of the criminal laws of said State and are so authorized to prosecute any person for any violation of any of said provisions of said section thirty-five of said Statute of the State of Florida, and divers of said defendant prosecuting officers have been and are threatening to prosecute divers of complainants therefor, and such prosecutions will affect the property and property rights of each of said complainants to wit, will prevent them from enjoying, using or disposing of their property or transacting their business as aforesaid, and will greatly lessen the value of their property, and will prevent them from disposing of much property now in their possession as aforesaid, and will prevent them from acquiring and disposing of like property in the future, and will prevent them from carrying out their contracts or representations in connection with property already sold or disposed of as aforesaid; and said threatened actions and proceedings of each of said prosecuting officers and each of said tax collectors will have all of said consequences and effects; and each of said complainants and persons in like situation will be frequently and
36 constantly arrested, restrained and deprived of their liberty and prosecuted in the courts of said State by or under the authority and action of said defendant prosecuting officers herein-

before named, and that each of said complainants and every person in like situation has no adequate action or remedy in the premises at law and can only obtain suitable or adequate relief in a court of equity. That such seizures, sales, damage and injuries of and to the property and businesses of each of said complainants and such other persons will be done and inflicted and such arrests, deprivations of liberty and prosecutions will be made, done and instituted and proceeded with before complainants could give notice and apply for and obtain an interlocutory injunction in this Honorable Court by getting such application heard and determined by three judges in accordance with Section 266 of the Statute of the United States entitled "An Act to codify, revise, and amend the laws relating to the Judiciary generally called the Judicial Code, and that irreparable loss and damage in the premises and in each of the matters, ways and proceedings hereinbefore mentioned will result to each of said complainants unless temporary restraining order is granted by this Honorable Court to remain in force until hearing and determination of such an application for interlocutory injunction upon notice may be had.

That notice of applying for such restraining order is not required or contemplated by the laws of the United States, and could not be given in time for relief on account of the great numbers and scattered locations of defendants, and any such notice would hasten the said acts, wrongs and injuries and to a great extent defeat and prevent said relief prayed in this bill of complaint, and to which complainants are entitled as aforesaid.

XXIII

For as much, therefore, as all of said matters and things herein complained of are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orators
37 in the premises, and inasmuch as Complainants and each of them have no adequate remedy in the premises by the strict rules of common law, and can obtain relief only in a Court of equity where matters and things of the kind and character heremabove stated are properly cognizable and relievable, and to the end that they and each of them may have proper, suitable and adequate relief which they and each of them can obtain only in a Court of equity, in and to the end, therefore, that the said defendants and that each of them may, if they can, show why your orators should not have the relief herein and hereby prayed and may full, true, direct and perfect answer make to all and singular the matters herein set forth as if particularly interrogated thereunto but not under oath, their oaths to such answer or answers being hereby expressly waived: Your orators pray as follows:

1. That each of said defendant Tax Collectors hereinabove named, as such Tax Collector, and each of said defendant State's Attorney, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitor, and each of said defendant Prosecuting Attorneys,

hereinbefore named, as such Prosecuting Attorney, and all persons acting by, through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute- of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by Your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during the pendency of this suit and by permanent and perpetual injunction from and issuing out of this Honorable Court, and that Complainants and each of them be granted and have any and all proper writs of injunction, accordingly, restraining and enjoining them and each and every of them from collecting or
38 attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute- of the State of Florida for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interfering with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any *such* that may be instituted or begun, after the filing of this Bill of Complaint, or the making or issuance of any such restraining order or injunction herein or any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said Complainants, or of any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the Complainants or any of them, or any other person, firm or corporation similarly situated, or their respective businesses, by reason or because of said license taxes and said provisions of said Statute hereinabove mentioned. That Complainants may have any proper order to the Defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not issue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit.

2. That all the aforesaid enactments and provisions and every of them of said Section 35 of said Statute providing for or requiring the payment of said license taxes, hereinabove mentioned
39 and complained of, to-wit, all said license taxes imposed provided for or required to be paid by said Section 35 of said Statute for offering with merchandise bargained or sold in the course

of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, with merchandise, bargained or sold as aforesaid, or any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same, or for using any like device, slip or token, including trading stamps, and all the enactments and provisions thereof providing or imposing a fine or imprisonment for any violation thereof, may be declared and deceed to be unconstitutional, illegal and void and that a perpetual injunction and writ or writs of injunction be issued restraining and enjoining the enforcement thereof, as hereinbefore prayed.

3. That Complainants and each of them may have such further and other relief in the premises as to equity may pertain, and may to the Court seem meet.

4. That a writ or writs of subpœna may issue to the said Defendants and each of them requiring them and each of them to appear upon a day or days therein to be specified and to answer this Bill of Complaint fully and truthfully, but not on oath, oath being hereby expressly waived, and that they and each of them abide by and perform what the Court shall decree in the premises.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

STATE OF FLORIDA,
County of Duval ss:

Personally appeared before me, a Notary Public for the State of Florida, Simon Benjamin, who being first duly sworn, deposes and says, that he is the General Manager of J. S. Pinkussohn Cigar Company, one of the Complainants in the foregoing Bill of Complaint, and he makes this affidavit for and on behalf of said Complainants; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) SIMON BENJAMIN.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public for the State of Florida, James W. Davidson, who being first duly sworn, deposes and says, that he is the Secretary and Treasurer of The Forsyth Company one of the Complainants in the foregoing Bill of Com-

plaint, and he makes this affidavit for and on behalf of said Complainant; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) JAMES W. DAVIDSON.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

41 STATE OF FLORIDA,
County of Duval, ss:

Personally appeared before me, a Notary Public for the State of Florida, Charles M. Lewis, who being first duly sworn, deposes and says, that he is the President of Van Deman and Lewis Company, one of the Complainants in the foregoing Bill of Complaint, and he makes this affidavit for and on behalf of said Complainants; that he has heard read said Bill of Complaint, and knows the contents thereof, and that the same is true, except as to the matters therein stated to be set forth upon information and belief, and therein he believes it to be true.

(Signed) CHARLES M. LEWIS.

Sworn to and subscribed before me this 21st day of August, A. D. 1913.

[SEAL.] M. M. WHITE,
Notary Public for the State of Florida at Large.

My Commission expires the 11th day of June, A. D. 1917.

(Endorsed:) Bill of Complaint. Filed August 21st, 1913, E. O. Locke, Clerk.

42 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval

County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
43 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector

for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

44 The Complainants in the above entitled cause apply to the Judge of said Court and move for an interlocutory injunction during the pendency of this suit, in accordance with the prayers of the Bill of Complaint herein, to-wit, that each of said defendant Tax Collectors, hereinabove named, as such Tax Collectors, and each of said defendant State's Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinabove named as such County Solicitors, and each of said defendant prosecuting Attorneys, hereinabove named, as such Prosecuting Attorney, and all other persons acting by through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by Your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during pendency of this suit from collecting or attempting to collect from said Complainants or any of them, or from any

person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling, or delivering with merchandise or using any coupon, clip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling, interferring with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of the Bill of Complaint herein, or the making or issuance of this restraining order or interlocutory injunction herein, or on any indictment or information found
45 or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them or any part thereof, or of punishing, fining or imprisoning or causing the same to be done, of said complainants, or any of them, or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interferring with the complainants or any of them, or any other person, firm or corporation similarly situated, or in their respective businesses because of said license taxes and said provisions of said Statute hereinbefore mentioned, to-wit, Section 35, Chapter 6421, of the Laws of the State of Florida; and that until the hearing and determination of said application for an interlocutory injunction, that the Judge of said Court grant such temporary restraining order as prayed in the Bill of Complaint, and similar in substance to the interlocutory injunction herein applied for.

CHARLES M. COOPER,
CHARLES P. COOPER,
J. J. G. COOPER,
Counsel & Solicitors for Complainants.

(Endorsed:) Application for Interlocutory Injunction. Filed Aug. 21st. 1913, E. O. Locke, Clerk.

46 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-

47 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

48 Upon application of the Complainants in the above entitled cause, and the presentation and consideration of the Bill of Complaint, and the allegations thereof, sworn to as appears from the

affidavits attached thereto, and it appearing thereby that irreparable loss and damage would result to the Complainants unless a temporary restraining order is granted in the premises;

It is hereby ordered that each of said defendant Tax Collectors hereinbefore named, as such Tax Collectors and each of said defendant State's Attorney-, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitors, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such Prosecuting Attorney, and all other persons acting by, through or under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said section 35 of said Statute of the State of Florida, complained of, to-wit, Chapter 6421 of the laws of Florida, be and are hereby restrained until the hearing and determination of the application of Complainants in said cause for an interlocutory injunction, from collecting or attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated, said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or
49 token, and from levying on, seizing selling or interfering with any property of said Complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this Bill of Complaint, or the making or issuance of this restraining order herein, or on any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said Complainants or any of them or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interfering with the Complainants or any of them or any other person, firm or corporation, similarly situated, or in their respective businesses, by reason or because of said license taxes and said provisions of said statute hereinabove mentioned, to-wit, Chapter 6421, of the laws of the State of Florida.

Done and ordered this 21st. day of August, A. D. 1913.

RHYDON M. CALL,
District Judge, Southern District of Florida.

(Endorsed:) Restraining order. Filed Aug. 21st. 1913, E. O. Locke, Clerk.

50 In the United States District Court for the Southern District of Florida.

VAN DEMAN & LEWIS COMPANY et al.
vs.
JOHN W. RAST, Tax Collector, etc., et al.

It is Ordered that the above entitled case be heard before Circuit Judge David D. Shelby and District Judges Wm. B. Sheppard and Rhydon M. Call, at Huntsville, Alabama, on Thursday, September 18, 1913, at 10 o'clock A. M.

RHYDON M. CALL,
District Judge, Southern District of Florida.

A true copy.
E. O. LOCKE, *Clerk.*

(Endorsed:) Order Setting Case for Hearing Sept. 18th. 1913. Filed Sep? 8th. 1913, E. O. Locke, Clerk. Sep. 8, 1913.

51 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of Florida, et al., Complainants,
vs.
JOHN R. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

The defendants herein, appearing specially and without submitting to or acknowledging the jurisdiction of this Court to try and determine the issues involved or to make any valid orders herein, move the Court to dismiss this suit and for grounds for such motion say:

1. That no sufficient facts are averred in complainants' bill of complaint to authorize this Court to take jurisdiction in this cause and enjoin and restrain the defendants, who are officers of the State of Florida, from the performance of the duties imposed upon them by the statute referred to, viz: Section 35 of Chapter 6421, Acts of 1913, Laws of Florida.

2. That it appears from the averments of complainants' bill of complaint that complainants have a complete and absolute remedy at law.

3. That it appears from the averments of complainants' bill of complaint that they seek to enjoin and restrain prosecuting officers of the State of Florida from the performance of their official duty in the enforcement of a criminal statute of the State of Florida of a general and public nature.

4. That it appears from the averments of complainants' bill of complaint that they seek to enjoin an alleged threatened seizure of

personal property of complainants in the enforcement of the collection of an alleged illegal tax.

52 5. That it appears from the averments of complainants' bill of complaint that they seek to enjoin a threatened seizure of personal property of complainants in the enforcement of the collection of a tax imposed by a statute of the State of Florida of a general and public nature.

6. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the statute referred to will regulate, hinder, restrain, prohibit or destroy interstate commerce between the State of Florida and other States of the United States, in violation of the provisions, or any of them, of the constitution of the United States.

7. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deprive or tend to deprive complainants of liberty or property without due process of law, in violation of the provisions, or any of them, of the constitution of the United States.

8. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deny to complainants the equal protection of the law, in violation of the provisions, or any of them, of the constitution of the United States.

9. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will tend to impair contra-tual obligations of the complainants, in violation of the provisions, or any of them, of the constitution of the United States.

10. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said Statute will require or result in an arbitrary and unlawful classification of the business of complainants for purposes of taxation, in violation of the provisions, or any of them, of the constitution of the United States.

T. F. WEST,
Attorney General of the State of Florida, for the Defendant.

September 11, 1913.

(Endorsed:) Motion to Dismiss Bill. Filed Sep. 12, 1913, E. O. Locke, Clerk.

53 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Governor of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each of them, are hereby notified that the application filed therein in said Court by the complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein, a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville in the State of Alabama, on Thursday the 18th. day of September, A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before the Honorable David D. Shelby, Circuit Judge in and for the Fifth Circuit of United States, The Honorable Rhydon M. Call, District Judge for the Southern District of Florida and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

(Endorsed:) Notice of Hearing of Application for Interlocutory Injunction. Filed Sept. 16., 1913, E. O. Locke, Clerk.

54 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Govern- of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each

of them, are hereby notified that the application filed therein in said Court by the Complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville, in the State of Alabama, on Thursday, the 18th. day of September A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before The Honorable David D. Shelby, Circuit Judge in and for the Fifth Circuit of the United States, the Honorable Rhydon M. Call, District Judge for the Southern District of Florida, and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

Service of copy of above notice and of copy of Bill of Complaint acknowledged this 11th. day of September A. D. 1913.

T. F. WEST.

(Endorsed:) Acknowledgment of Service of Notice of Application for Interlocutory Injunction by T. F. West, Attorney General and defendants' solicitor. Filed Sep. 16th, 1913, E. O. Locke, Clerk.

55 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

Notice of Hearing of Application for Interlocutory Injunction.

The Honorable Park Trammell, Govern- of the State of Florida, The Honorable Thomas F. West, Attorney General of the State of Florida, and the Defendants in the above entitled cause, and each of them, are hereby notified that the application filed therein in said Court by the Complainants in said cause for interlocutory injunction during the pendency of said suit, in accordance with the prayers of the Bill of Complaint therein a copy of which Bill of Complaint is herewith served on them, will be heard at the City of Huntsville, in the State of Alabama, on Thursday, the 18th. day of September A. D. 1913, at 10 o'clock A. M. or as soon thereafter as counsel can be heard by and before The Honorable David D. Shelby Circuit Judge in and for the Fifth Circuit of the United States, The Honorable Rhydon M. Call, District Judge for the Southern District

of Florida, and The Honorable W. B. Sheppard, District Judge for the Northern District of Florida.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.

Service of copy of above notice and of copy of Bill of Complaint acknowledged this 11th day of September A. D. 1913.

PARK TRAMMELL.

(Endorsed:) Acknowledgment of Service of Notice of Application for interlocutory injunction by Governor —. Filed Sep. 16th 1913, E. O. Locke, Clerk.

56 In the District Court of the United States in and for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Defendants.

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Eugene O. Locke, Clerk of the District Court of the United States in and for the Southern District of Florida, do hereby certify that on the 9th day of September A. D. 1913, I mailed under Equity Rule 4 of the United States Courts to each and every defendant in the above entitled suit and also to the Governor and Attorney General of the State of Florida, a copy of the "Order for Hearing Set for September 18th 1913, at Huntsville, Alabama," and I also made the following entry on the Equity Docket in my office, to-wit: September 9th 1913, issuing and mailing seventy seven notices of hearing at Huntsville Alabama for September 18th 1913, one to each of the defendants and one to the Governor and one to the Attorney General of the State of Florida seventy seven folios at ten cents a folio, $7.70" and I further certify that the original order is now and was at that time a part of the record on file in my office and that said original order is recorded in my office in Equity Journal page sixty (60), and a copy of which above mentioned order is hereto attached.

In witness whereof, I have hereunto set my hand and official seal at Jacksonville, Florida, this 16th day of September A. D. 1913.

[SEAL.]

EUGENE O. LOCKE, *Clerk.*
By EUGENE D. DODGE,
Deputy Clerk.

(Endorsed:) Certificate of E. O. Locke, Clerk of Mailing Notices. Filed Sept. 16th 1913, E. O. Locke, Clerk.

57 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN & LEWIS COMPANY et al.,
vs.
JOHN W. RAST, as Tax Collector for Duval County, Florida, et al.

Opinion.

Charles M., C. P., and J. J. G. Cooper, for the Complainants.
Thomas F. West, Attorney General of Florida, for the defendants.

Before Shelby, Circuit Judge; Call and Sheppard, District Judges.

CALL, *District Judge:*

This cause comes on to be heard on a motion for an interlocutory injunction before Circuit Judge Shelby, and District Judges Sheppard and Call, at Huntsville, Alabama, on September 18, 1913; upon consent of the parties twenty days were allowed the Attorney General of the State of Florida, to file additional briefs.

Van Deman and Lewis Company, a corporation, and five others, corporations and individuals, and others similarly situated, filed their bill of complaint against John W. Rast, Tax Collector of Duval County, Florida, and the Tax Collectors of each County in the State; the different State's Attorneys, County Solicitors and prosecuting attorneys of the Circuits and Counties of the State of Florida.

The bill of complaint alleges among other things that each of the complainants are engaged in business as merchants handling certain articles enumerated, at the sale of which it is the custom to give coupons, slips, certificates or other tokens which are redeemable in merchandise or receivable in part payment for certain articles
58 to be selected by the customer from a list of same furnished by the manufacturer in some instances and the merchant in others. The list is too long to be set out here.

The bill further alleges that each of these complainants have been, long prior to the passage of the act, hereinafter referred to, and still is engaged in the business of selling said goods or some of them, and giving these coupons, slips, certificates or other tokens, redeemable as before mentioned. That trading stamps are substantially like some of the coupons or certificates before mentioned. That each of them carry large stocks of said goods and other articles of merchandise; that coupons, slips, certificates or other tokens are given by the different manufacturers of different lines of goods. That under the act of the Legislature, hereinafter referred to, each is liable to have his stock seized and his person imprisoned and exhorbitant fines imposed, and his business broken up and his avocation destroyed and his customers driven away.

The bill further alleges that each of the complainants have paid all license taxes due to the State of Florida, or any County thereof, for carrying on the several businesses of each, other than the license

taxes concerning any coupon, profit-sharing certificates or other evidence of indebtedness or liability mentioned in the act to be referred to. Also that the amount required to be paid by each will be more than three thousand dollars.

The bill further alleges that at the session of the Legislature of the State of Florida, held during the year 1913, "Chapter 6421, entitled "An Act Imposing Licenses and other" "taxes, Providing for the payment thereof, and prescribing" "Penalties for doing business without a license or other" "failure to comply with the provisions thereof," was passed by said Legislature and approved June 5, 1913, by the Governor of Florida, and then proceeds to
59 attack section 35 of the act on various grounds as violating the constitution of the State of Florida, the commerce clause of the constitution of the United States, the fourteenth amendment to the same, and various other portions of the constitution, specifically set out in the bill of complaint. Further that irreparable damage will occur to each by the seizure of their stocks of goods by the tax collectors of the several counties, etc., setting out the facts whereby such irreparable damage will occur. That the state's attorneys, county solicitors and prosecuting officers do threaten to proceed against them to enforce by criminal proceedings said statute, etc. That the tax collectors of the different counties, acting under instructions from the Comptroller of the State, are threatening to seize their stock, etc. to enforce said license tax. The bill then prays for an injunction order, interlocutory and permanent, against the defendants, restraining and enjoining each of them from attempting to enforce said section 35.

The Attorney General of the State of Florida, specially appearing for each of the defendants, moved to dismiss the bill of complaint on the grounds:

1. That no sufficient facts are averred in complainants' bill of complaint to authorize this court to take jurisdiction in this cause and enjoin and restrain the defendants, who are officers of the State of Florida, from the performance of the duties imposed upon them by the statute referred to, viz.: Section 35, of Chapter 6421, Acts of 1913, Laws of Florida.

2. That it appears from averments of complainant- bill of complaint that complainants have a complete and absolute remedy at law.

3. That it appears from the averments of complainants' bill of complaint that they seek to enjoin and restrain prosecuting officers of the State of Florida, from the performance of their official duty in the enforcement of a criminal statute of the State of Florida, of a general and public nature.

4. That it appears from the averments of the complainants' bill of complaint that they seek to enjoin an alleged threatened seizure of personal property of complainants in the enforcement of the collection of an alleged illegal tax.

5. That it appears from the averments of complainants' bill of complaint that they seek to enjoin a threatened seizure of personal

property of complainants in the enforcement of the collec-
60 tion of a tax imposed by a statute of the State of Florida, of a general and public nature.

6. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the statute referred to will regulate, hinder, restrain, prohibit or destroy interstate commerce between the State of Florida and other States of the United States, in violation of the provision of any of them, of the constitution of the United States.

7. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deprive or tend to deprive complainants of liberty or property without due process of law, in violation of the provisions, or any of them, of the constitution of the United States.

8. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will deny to complainants the equal protection of the law, in violation of the provisions or any of them, of the constitution of the United States.

9. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will tend to impair contractual obligations of the complainants, in violation of the provisions, or any of them of the constitution of the United States.

10. That it does not appear from the facts averred in complainants' bill of complaint that an enforcement of the provisions of the said statute will require or result in an arbitrary and unlawful classification of the business of complainants for purposes of taxation, in violation of the provisions, or any of them of the constitution of the United States.

The section of the Act called in question by the bill of complaint, reads as follows:—

"SECTION 35. Merchants, Druggists, and Store Keepers, shall pay a license tax as follows:—

For the first one thousand dollars or fraction of one thousand dollars of stock of merchandise three ($3.00) Dollars in each county and for each place of business, and one and one half ($1.50) Dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only shall pay a license tax of one and one half ($1.50) dollars for each one thousand dollars of their stock of merchandise. Provided, that the words "Stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of the capital stock invested in the business; Provided, further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer. Provided, further, that each and every person, firm, corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of Five Hundred ($500.00) Dollars and a County license

tax of two hundred and fifty ($250.00) Dollars, in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any per-
61 son, firm or corporation, a separate state and county license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm, or corporation who may redeem the same. The license prescribed in this section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this section, whether acting for himself or as agent of another, shall on conviction thereof, be punished by fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding six months.

Merchants using trading stamps shall pay a license tax of two hundred and fifty ($250.00) Dollars for each place of business, where they use such stamps."

This section also prescribes license taxes for mercantile agencies and merchant tailors. Chap. 6421, Laws of 1913, Sec. 35.

The instant suit is brought by complainants and all others similarly situated against the tax collectors of the different counties, that state's attorneys for the several circuits and prosecuting officers of the several counties, to restrain them and each of them from enforcing the portion of section 35, of Chapter 6421, of the laws of Florida, requiring the payment of a license tax from those issuing coupons, certificates, etc., as mentioned in said section.

The jurisdiction of this Court is invoked on the ground that the statute violates the interstate commerce clause of the constitution of the United States, and the fourteenth amendment to the constitution, in that it abridges the privileges and immunities of complainants and other citizens of the United States, and will deprive them of liberty and property without due process of law, and will deny to them the equal protection of the laws. Equity jurisdiction is invoked to avoid a multiplicity of suits and to prevent irreparable injury to the business and property of the complainants.

The Attorney General of the State of Florida, on behalf of the defendants, moves to dismiss the bill of complaint on the
62 several grounds set out in his motion.

The first and third grounds of the motion may be considered together. It is well settled that state officers may be enjoined from threatened prosecutions to enforce a void statute, by either civil or criminal proceedings, where property rights will be destroyed, and irreparable damage be occasioned by such actions.

Ex parte Young, 209 U. S. 123.

Dobbins vs. Los Angeles, 195 U. S. 223.

Davis & Farnum Mfg. Co. v. Los Angeles 189 U. S. 207.

The second, fourth and fifth grounds of the motion may be disposed of together. The bill alleges a large number of persons in-

terested, their liability to have their property seized, their business destroyed by such seizures and arrest, their customers lost and deprived of their avocations. Ordinarily, the seizure of personal property will not be enjoined by a court of equity, but in the instant case under the allegations of the bill of complaint, that such seizures and arrests on account of the peculiar uses and character of the property whereby they maintain their business and occupations, their losses would be impossible of ascertainment and computation, and thus they have no adequate remedy at law, and brings this case within the exception recognized by all the courts.

And it is on the theory that complainants in the cases had a complete, adequate and sufficient remedy at law, that the Supreme Court of Florida, rendered the decision cited by the Attorney General, in 31 Fla. 160, wherein they cite with approval the case of Baldwin vs. Tucker, in 16 Fla. 258, wherein the court say "Courts of equity have uniformly refused to grant an injunction to restrain a mere trespass, except in rare cases when the mischief would be irreparable by reason of some extraordinary value of quality of the thing endangered."

The Supreme Court of the United States, in the case of Boise Hot & Cold Water Co. vs. Boise City, in 213 U. S. 276 say

63 "Equity will not interfere where there is a remedy at law which is as complete, practicable and adequate as equity could afford. Injunctions should not issue against the enforcement of the tax merely because it is unconstitutional or illegal, unless other circumstances bring the case within some clear ground of equity jurisdiction." "Even though some states may, for convenience of remedy permit equity to enjoin the collection of a tax for mere illegality, courts of a different and paramount sovereignty should not do so, and Federal Courts should not interfere by injunction with the fixed arrangements of a state, if the rights involved can be preserved in any other manner."

The showing made by the bill of complaint that these complainants have large stocks of goods and merchandise subject to the very drastic exactions of this section of the statute; that they are under contract for the sale of such merchandise and that the seizure of their stocks, and *arrests*, as threatened, will cause the loss of trade and customers, interrupt their business and occupations, cause the sacrifice of stock seized and subject them to heavy fines, etc., in our opinion make such a case of irreparable damage to property and property rights as is properly cognizable in equity, and falls squarely within the rule laid down by the Supre- Court above quoted.

The second, fourth and fifth grounds of the motions are not therefore well taken.

The sixth, seventh, eighth, ninth and tenth grounds of the motion challenge the different allegations of the unconstitutionality set up in the bill of complaint and bring us to the consideration of the question whether the section violates the constitution in any respect.

The power of taxation is an incident to and inherent in every

64 sovereign state and may be exercised to such an extent as to embarrass and even destroy, unless restrained from so doing by the organic law.
Postal Tel. Co. vs. Charleston, 153 U. S. 699.
McCray vs. U. S. 195, U. S. 37.
Kehrer vs. Stewart 197 U. S. 50.

The fourteenth amendment to the constitution of the United States declares that no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. And we may say in passing that the constitution of the State of Florida contains the same limitations on the action of the Legislature.

This clause of the Federal constitution has been construed by the Supreme Court of the United States as a prohibition upon the states passing any law that would arbitrarily deprive a person of life, or liberty or arbitrarily deprive him of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; and that no greater burdens should be laid upon one than are laid upon others in the same calling and condition.
Missouri vs. Lewis, 121 U. S. 22.

The tenth ground of the motion contends that this section is not an unlawful and arbitrary classification of business for taxation.

Mr. Justice Harlan, in Connelly vs. Union Sewer Pipe Co., 184 U. S. 540, says "The difficulty is not met by saying that generally speaking the state, when enacting laws may in its discretion, make a classification of persons, firms, corporations and associations, in order to subserve public objects. For this Court has held that classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis". "But arbitrary selection can never be justified by
65 calling it classification. The equal protection demanded by the fourteenth amendment forbids this."
Gulf, Col. & Sante Fe Ry. Co. vs. Ellis, 165 U. S. 150.
Cotling vs. Kansas City Stock Yards Co. 183 U. S. 79.

Is there a just basis for the classification attempted in this section of the act? Merchants, etc., all pay a tax according to the value of the stock carried by each, but if they sell goods for which coupons, etc, are given by themselves or others, then they must pay this additional tax for each place of business in each and every county in which said business is conducted or carried on. And if goods are offered for sale with which coupons are given redeemable by persons other than the seller, then this tax must be paid by him for each of said lines of goods.

We can see no just basis for such classification. It is an arbitrary selection of one merchant for the imposition of a "greater burden" than that imposed on others in the same calling and condition.

The legality of what is generally known as the trading stamp business has been generally affirmed by the Courts, State and Federal. The use of coupons, profit-sharing certificates, etc, is an entirely legitimate method of advertising, and the merchants, etc, employing this method are entitled to the protection of the constitution of the United States.

State vs. Shugart, 138 Ala. 86.
Ex parte Drexel. 147 Cal. 763.
Hewin vs. Atlanta, 121 Ga. 723.
Commonwealth vs. Session 178 Mass. 578.

Long vs. State 74 Md. 565 and many others cited in the case of Ryan & Oathout, et al. vs. W. V. Tanner, as Attorney General et al., Eastern District of Washington, recently decided and not yet reported.

The Attorney General in his brief refers to the act of the Legislature prohibiting the shipment of green fruit sustained and upheld by the Supreme Court of Florida, upon authority of the case of Savage vs. Jones, 225 U. S. 501.

66 These cases it seems to us are not in point. Each of these cases were so decided because it was an exercise of police power for the protection of the health of the community. A legitimate subject for police regulation. As before pointed out, this coupon business is legitimate, no way affecting the health or morals of the community.

We do not care, however, to consider the question, whether the act violates the interstate commerce clause of the constitution, having reached the conclusion that the section violates the fourteenth amendment, it is unnecessary that we consider the other grounds of unconstitutionality, alleged in the bill of complaint.

It is therefore ordered that the interlocutory injunction issue as prayed in and by said bill of complaint.

RHYDOM M. CALL,
U. S. District Judge.

SHELBY, *Circuit Judge:*

On the facts appearing in the record, I am of the opinion that the plaintiffs are entitled to the interlocutory injunction, I concur, therefore, in the order granting the same.

W. B. SHEPPARD, *District Judge:*

I hereby concur in the above opinion.

(Endorsed:) Opinion and Order for Interlocutory Injunction. Filed Oct. 23rd. 1913, E. O. Locke, Clerk.

67 In the District Court of the United States for the Southern District of Florida. In Chancery.

Entry in Equity Journal on Page 70.

THURSDAY, October 23rd, 1913.

Present: Hon. Rhydon M. Call, District Judge.
Officers, Petit Jurors, Crier and Bailiffs in attendance. Whereupon Court is opened by due proclamation:

VAN DEMAN & LEWIS Company et al.
vs.
JOHN W. RAST, Tax Collector et al.

The motion of defendants in the above entitled cause to dismiss said suit, having come on to be heard and having been argued by counsel for complainants and defendants, and having been considered by the Court, it is ordered that said motion be, and the same is hereby overruled and denied, and that the defendants have until the 24th. day of November 1913, on or before which day to answer the bill of complaint in said cause.
Done and ordered this 23rd. day of October A. D. 1913.

RHYDON M. CALL,
District Judge.

68 In the United States District Court for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST. Tax Collector for Duval County, et al., Defendants.

The motion of the defendants in the above entitled cause, to dismiss said suit, having come on to be heard, and having been argued by counsel for complainants and defendants, and having been considered by the Court, it is ordered that said motion be, and the same is hereby, overruled and denied, and that the defendants have until the 24th. day of November 1913 on or before which day to answer the Bill of Complaint in said cause.
Done and ordered this 23rd. day of October A. D. 1913.

RHYDON M. CALL
District Judge.

(Endorsed:) Order Denying Motion to Dismiss. Filed Oct. 23, 1913, E. O. Locke, Clerk.

69 In the District Court of the United States, in and for the Southern District of Florida.

The President of the United States of America to John W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G. Starbuck,
70 County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake

County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax ollector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folson, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants:

In accordance with an order and decree filed and entered in the District Court of the United States, in and for the Southern
71 District of Florida, in Chancery, at Jacksonville, Florida on the 23rd. day of October A. D. 1913, signed by the Honorable Rhydon M. Call, District Judge, and concurred in by the Honorable David D. Shelby, Circuit Judge and the Honorable William B. Sheppard, District Judge, you the said defendant Tax Collectors, hereinabove named and each of you as such Tax Collector, and each of you the said defendant State's Attorneys hereinabove named, as such State Attorney, and each of you the said defendant County Solicitors, hereinbefore named as such County Solicitor, and each of you the said defendant Prosecuting Attorneys, hereinbefore named as such Prosecuting Attorney and all other persons acting

by, through or under you or by your authority or the authority of any of you and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said Section 35 of said Statute of the State of Florida, are hereby enjoined from collecting or attempting to collect from said Complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said Statute of the State of Florida, for or because of or on account of offering, giving, selling, or delivering with merchandise or using any coupon, slip, certificate or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interferring with any property of said complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes, or any of them, or any part thereof and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or other criminal proceeding or carrying on or prosecuting any such that may have been instituted or begun, after the filing of the Bill of Complaint herein, or the making or issuance of the restraining order or this interlocutory injunction herein, or on any indictment or information found or filed thereafter for the purpose of
72 collecting or causing to be paid said license taxes or any of them or any part thereof, or of punishing, fining or imprisoning or causing the same to be done, of said complainants, or any of them, or of any other person, firm or corporation similarly situated, and from causing any of said things to be done and from taking any other action or in any other manner interferring with the Complainants or any of them, or any other person, firm or corporation similarly situated, or in their respective businesses because of said license taxes and said provisions of said Statute hereinbefore mentioned, to-wit, Section 35, Chapter 6421 of the laws of the State of Florida, during the pendency of this suit or until the further order of this Court.

Witness the Honorable Rhydon M. Call, Judge of said Court and the seal thereof at Jacksonville, in said District this 24th. day of October A. D. 1913.

E. O. LOCKE, *Clerk.*

(Marshal's Return.—United States of America, Northern District of Florida, *ss:* I hereby certify and return that I served the annexed Injunction on the therein-named Thos. F. West, Attorney General for the State of Florida and Solicitor of record for defendants by handing to and leaving a true and correct copy thereof with him personally at Tallahassee in said District on the 31st. day of October A. D. 1913. Jas. B. Perkins, U. S. Marshal, by W. L. Strickland, Deputy.)

(Endorsed:) Original Interlocutory Injunction. Filed Nov. 5th. 1913, E. O. Locke, Clerk.

73 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
74 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

75 The above named defendants feeling themselves aggrieved by the order and decree made and entered on the 23rd day of October, A. D. 1913, in the above entitled cause overruling and denying the motion of said defendants to dismiss the

bill of complaint of said complainants, and granting to said complainants a temporary injunction against said defendants, do hereby appeal from said order and decree to the Supreme Court of the United States, for reasons specified in the assignment of errors filed herewith, and they do pray that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the United States Supreme Court at Washington, D. C., as is provided by law.

T. F. WEST,
Attorney General of the State of Florida,
Attorney for Defendants.

11/17/13.

The foregoing claim of appeal is allowed.

RHYDON M. CALL, *Judge.*

(Endorsed:) Petition for appeal and allowance of appeal. Filed Nov. 24th, 1913, E. O. Locke, Clerk.

76 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Sev-

enth Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
77 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L.Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County,

State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

78 Now come the above named defendants by T. F. West Attorney General of the State of Florida, Attorney for said defendants, and having prayed for and entered an appeal to the Supreme Court of the United States from an order and decree entered herein on the 23rd day of October A. D. 1913, overruling and denying the motion of said defendants to dismiss the bill of complaint of said complainants, and granting to said complainants a temporary injunction against said defendants, pursuant to the prayer of the bill of complaint in this cause, and respectfully represent as grounds of appeal therefrom, and as an assignment of errors herein that the said Court erred in the following particulars.

1. In overruling and denying the motion of said defendants to dismiss the bill of complaint of said complainants upon the grounds stated in said motion to dismiss.

2. In deciding that the statute referred to, that is to say Section 35 of Chapter 6421, Laws of Florida, contravenes and violates the provisions of the Fourteenth Amendment to the Constitution of the United States, and is therefore invalid and not enforce-able.

3. In deciding that a temporary injunction as prayed for in complainants' bill of complaint should issue against the said defendants, and each of them.

4. In granting the prayer of complainants for a temporary injunction against the said defendants, as prayed in the bill of complaint.

T. F. WEST,
Attorney General of the State of Florida;
Attorney for Defendants.

11/17/13.

Endorsed: Assignment of Errors. Filed Nov. 20th 1913, E. O. Locke, Clerk.

79 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida; The Harkisheimer Company, a Corporation Organized and Existing under the Laws of the State of Florida; J. S. Pinkussohn Cigar Company, a Corporation Organized and Existing under the Laws of the State of South Carolina; The Forsyth Company, a Corporation Organized and Existing under the Laws of the State of Florida; Joseph R. Mickler, Eli Witt, Complainants,

vs.

JOHN W. RAST, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeod, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Col-
80 lector for Orange County, State of Florida; L. G. Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordan R. Broom, Prosecuting Attor-

ney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit, State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson, Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Waukulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida, Defendants.

81 Now, on this 20th day of November, A. D. 1913, pursuant to the application for appeal, it is ordered that the above appeal be allowed, returnable to the Supreme Court of the

United States within thirty (30) days from this date, upon bond being given by or on behalf of the said defendants, with surety in the sum of Twenty five hundred dollars, for the payment of damages and costs, conditioned as required by law, payable to the above named complainants.

Done and ordered this 20th day of November A. D. 1913.

RHYDON M. McCALL, *Judge.*

(Endorsed:) Order Allowing Appeal. Filed Nov. 24th, 1913. E. O. Locke, Clerk.

82 In the United States District Court, for the Southern District of Florida.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Appellees.

To Van Deman and Lewis Company; The Harkisheimer Company; J. S. Pinkussohn Cigar Company; The Forsyth Company; Joseph R. Mickler; and Eli Witt, Greeting:

You and each of you are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States of America to be holden in the City of Washington, District of Columbia, in the United States, wherein the above named John W. Rast, Tax Collector for Duval County, State of Florida, et al., are appellants, and the above named Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida, et al. are Appellees; to show cause if any there be, why the order and decree of the Judges David D. Shelby, Rhydon M. Call and William B. Sheppard as within the appeal herein mentioned should not be corrected and reversed, and why speedy justice should not be done to the parties in this behalf;

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 20th day of November, A. D. 1913.

[SEAL.] RHYDON M. CALL, *Judge.*

11/17/13.

(Endorsed:) Service accepted this 10th day of December A. D. 1913, Charles M. Cooper, Counsel & Solicitor for Complainants and Appellees.

(Further Endorsement:) Original Citation. Filed Nov. 24", 1913, E. O. Locke, Clerk.

83 In the District Court of the United States, for the Southern District of Florida. In Chancery.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, et al., Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, a Corporation Organized and Existing under the Laws of the State of Florida, et al., Appellees.

Know all men by these presents, That Royal Indemnity Company, a New York corporation is held and firmly bound unto Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida, Joseph R. Mickler; Eli Witt, their legal representatives and successors, in the sum of twenty five hundred ($2,500) dollars, for the payment whereof well and truly to be made the said Royal Indemnity Company does hereby bind itself and its successors and assigns firmly by these presents.

Signed and Sealed this 6th day of December A. D. 1913.

The condition of this obligation is such that whereas the said Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida; Joseph R. Mickler, and Eli Witt did heretofore apply for and secure an order of said District Court, in Chancery, made and entered the 23rd
84 day of October, A. D. 1913, for an interlocutory injunction enjoining the defendants in said suit from enforcing the provisions of Section 35 of Chapter 6421, Laws of Florida, as prayed in Complainants' Bill of Complaint herein, and in said interlocutory injunction specified, and whereas the said defendants in said suit, Appellants on Appeal, have entered an appeal from such order to the Supreme Court of the United States, and the Judge of this Court has issued a citation directing the said Van Deman and Lewis Company, a corporation organized and existing under the laws of the State of Florida; The Harkisheimer Company, a corporation organized and existing under the laws of the State of Florida; J. S. Pinkussohn Cigar Company, a corporation organized and existing under the laws of the State of South Carolina; The Forsyth Company, a corporation organized and existing under the laws of the State of Florida; Joseph R. Mickler and Elib Witt to be and appear at a session of said Supreme Court.

Now the condition of this obligation is such that if the said John

W. Rast, Tax Collector for Duval County, State of Florida; William A. Hallows, Jr., State Attorney for Fourth Judicial Circuit, State of Florida; L. D. Howell, County Solicitor for Duval County, State of Florida; R. B. McLendon, Tax Collector for Dade County, State of Florida; John C. Gramling, State Attorney for Eleventh Judicial Circuit, State of Florida; James T. Sanders, County Solicitor for Dade County, State of Florida; William L. Colbert, Tax Collector for Marion County, State of Florida; John L. Branch, Tax Collector for Hillsborough County, State of Florida; George P. Raney, State Attorney for Sixth Judicial Circuit, State of Florida; William H. Jackson, County Solicitor for Hillsborough County, State of Florida; E. B. McMullen, Tax Collector for Pinellas County, State of Florida; A. M. McMullen, Prosecuting Attorney for Pinellas County, State of Florida; J. A. McLeon, Tax Collector for Suwanee County, State of Florida; C. A. Hardee, State Attorney for Third Judicial Circuit, State of Florida; Charles E. Allen, Tax Collector for Citrus County, State of Florida; George W. Scofield, State Attorney for Fifth Judicial Circuit, State of Florida; D. P. Smith, Tax Collector for Volusia County, State of Florida; C. D. Landis, State Attorney for Seventh Judicial Circuit, State of Florida; R. P. Hamlin, County Solicitor for Volusia County, State of Florida; B. M. Dowling, Tax Collector for Bradford County, State of Florida; A. V. Long, State Attorney for Eighth Judicial Circuit, State of Florida; T. H. Easterling, Tax Collector for Manatee County, State of Florida; J. B. Singletary, State Attorney for Tenth Judicial Circuit, State of Florida; J. L. Collier, Prosecuting Attorney for Manatee County, State of Florida; T. A. Sweeting, Tax Collector for Monroe County, State of Florida; E. P. Roberts, County Solicitor for Monroe County, State of Florida; W. E. Martin, Tax Collector for Orange County, State of Florida; L. G.
85 Starbuck, County Solicitor for Orange County, State of Florida; C. L. Bandy, Tax Collector for Osceola County, State of Florida; H. B. Geiger, Prosecuting Attorney for Osceola County, State of Florida; F. Marion Lanier, Tax Collector for Polk County, State of Florida; R. B. Huffaker, Prosecuting Attorney for Polk County, State of Florida; T. J. Campbell, Tax Collector for Palm Beach County, State of Florida; Gordon R. Broom, Prosecuting Attorney for Palm Beach County, State of Florida; A. M. Driggors, Tax Collector for Baker County, State of Florida; Philip H. Wright, Tax Collector for Brevard County, State of Florida; Arch J. Murrhee, Tax Collector for Clay County, State of Florida; W. M. Dowling, Tax Collector for Columbia County, State of Florida; Cyril Baldwin, Tax Collector for De Soto County, State of Florida; S. J. Hewitt, Tax Collector for Hamilton County, State of Florida; John C. Law, Tax Collector for Hernando County, State of Florida; R. L. Nutt, Tax Collector for Lake County, State of Florida; Henry A. Blake, Tax Collector for Lee County, State of Florida; Samuel J. Ellison, Tax Collector for Madison County, State of Florida; J. D. Ogilvie, Tax Collector for Nassau County, State of Florida; William L. Mobley, Tax Collector for Pasco County, State of Florida; R. J. Hancock, Tax Collector for Putnam

County, State of Florida; H. H. Floyd, Tax Collector for St. Johns County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; John B. Jinkins, Tax Collector for Seminole County, State of Florida; J. H. Hughes, Tax Collector for Sumter County, State of Florida; J. S. Roberts, Tax Collector for Escambia County, State of Florida; John P. Stokes, State Attorney for First Judicial Circuit, State of Florida; Scott M. Loftin, County Solicitor for Escambia County, State of Florida; C. S. Curtis, Tax Collector for Gadsden County, State of Florida; George W. Walker, State Attorney for Second Judicial Circuit State of Florida; J. Baxter Campbell, Prosecuting Attorney for Gadsden County, State of Florida; Hinton Folsom, Tax Collector for Jackson County, State of Florida; R. H. Buford, State Attorney for Ninth Judicial Circuit, State of Florida; H. B. Tiller, Tax Collector for Washington County, State of Florida; A. D. Carmichael, Prosecuting Attorney for Washington County, State of Florida; G. W. Miller, Tax Collector for Alachua County, State of Florida; J. B. Blackwell, Tax Collector for Bay County, State of Florida; J. T. Grayson, Tax Collector for Calhoun County, State of Florida; G. W. Hinsey, Tax Collector for Franklin County, State of Florida; J. W. Johnson Tax Collector for Holmes County, State of Florida; Edwin W. Tucker, Tax Collector for Jefferson County, State of Florida; S. R. Lanfston, Tax Collector for La Fayette County, State of Florida; Walter A. Demilly, Tax Collector for Leon County, State of Florida; John L. Carter, Tax Collector for Levy County, State of Florida; G. Morgan Deason, Tax Collector for Liberty County, State of Florida; John W. Helms, Tax Collector for Santa Rosa County, State of Florida; Frank M. Tyler, Tax Collector for St. Lucie County, State of Florida; Alton C. Hendry, Tax Collector for Taylor County, State of Florida; W. G. Durance, Tax Collector for Wakulla County, State of Florida; James A. McLean, Tax Collector for Walton County, State of Florida; shall prosecute said appeal
86 to effect and answer all damages and costs if they fail to make good said appeal, then the above obligation to be void; else to remain in full force and virtue.

ROYAL INDEMNITY CO.,
By R. W. BOURS, [SEAL.]
General Agent.

Attest:

M. H. LONG,
Consulting Attorney.

Approved:

RHYDON M. CALL, *Judge.*

Dec. 10, 1913.

(Endorsed:) Appeal Bond. Filed Dec. 10th, 1913, E. O. Locke, Clerk.

87 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST, Tax Collector for Duval County, et al., Defendants.

It is hereby stipulated and agreed by and between the parties, Complainants and Defendants, in the above entitled cause that no answer shall be filed in said case or any further proceedings had or carried on in said cause in said District Court during the pendency of the appeal of said Defendants to the Supreme Court of the United States that has been filed and begun; but nothing herein shall be construed to or shall prevent any proceedings that may be necessary or requisite in said District Court to enforce the injunction heretofore granted in said cause in said Court or observance thereof or obedience thereto.

November 25th, 1913.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.
T. F. WEST,
Counsel and Solicitor for Defendants.

(Endorsed:) Agreement that no Answer Need be Filed etc. During Pending of Appeal. Filed Nov. 26th. 1913, E. O. Locke, Clerk.

88 In the District Court of the United States for the Southern District of Florida. In Chancery.

VAN DEMAN AND LEWIS COMPANY et al., Complainants,
vs.
JOHN W. RAST, Tax Collector for Duval County, et al., Defendants

It is hereby stipulated and agreed by and between the parties, Complainants and Defendants, in the above entitled suit, by their respective Counsel and Solicitors, that in the appeal taken by the Defendants in said Court to the Supreme Court of the United States from the order and decree made and entered on the 23rd. day of October, A. D. 1913, in said cause overruling and denying the motion of said defendants to dismiss the Bill of Complaint of said Complainants and granting to said Complainants a temporary injunction against said Defendants, the Clerk of said District Court shall incorporate into the transcript of the record on said Appeal the papers and portions of the record hereinafter specified and may omit such papers and portions as are not specified herein, to-wit, to incorporate the following:

Bill of complaint.
Application for interlocutory injunction &c.
Restraining order.
Order setting case for hearing Sept. 18th. 1913.
Defendant's motion to dismiss.
Notice of hearing of application for interlocutory injunction.
Acknowledgments of service of notice of application for interlocutory injunction by T. F. West, Attorney General, and defendants solicitor.
89 Acknowledgment of service of notice of application for interlocutory injunction by Governor.
Certificate of E. O. Locke, Clerk, of mailing notices.
Opinion and order for interlocutory injunction.
Copy of entry in the minutes of said court of order for interlocutory injunction.
Order denying motion to dismiss.
Interlocutory injunction.
Petition for appeal.
Assignment of errors.
Order allowing appeal.
Original citation.
Bond for appeal.
Stipulation as to papers and portions of record to be incorporated into transcript of record on appeal.

CHARLES M. COOPER,
CHARLES P. COOPER,
JAMES J. G. COOPER,
Counsel and Solicitors for Complainants.
T. F. WEST,
Counsel and Solicitor for Defendants.

November 25th. 1913.

(Endorsed:) Stipulation as to Making Record. Filed Nov. 26th, 1913, E. O. Locke, Clerk.

90 In the District Court of the United States for the Southern District of Florida. In Chancery.

UNITED STATES OF AMERICA,
Southern District of Florida, ss:

I, Eugene O. Locke, Clerk of the above entitled Court, do hereby certify that the foregoing pages number- from one (1) to 89 constitutes a true and correct copy of the following named papers:—
Bill of Complaint.
Application for interlocutory injunction, &c.
Restraining order.
Order setting case for hearing Sept. 18th. 1913.
Defendants' motion to dismiss.
Notice of hearing of application for interlocutory injunction.
Acknowledgment of service of notice of application for interlocu-

tory injunction by T. F. West, Attorney General and defendants' solicitor.

Acknowledgment of service of notice of application for interlocutory injunction, by Governor.

Certificate of E. O. Locke, Clerk of mailing notices.

Opinion and order for interlocutory injunction.

Copy of entry in the minutes of said court of order for interlocutory injunction.

Order denying motion to dismiss.

Interlocutory injunction.

Petition for appeal.

Assignment of Errors.

Order allowing appeal.

Original citation.

Bond of appeal.

Agreement that answer will not have to be filed pending appeal.

Stipulation as to papers and portions of record to be incorporated into transcript of record on appeal.

which said original papers are on file in my office and a part of the record in the case of Ven Deman and Lewis Company et al. against J. W. Rast Tax Collector, et al.

In Witness Whereof, I have hereunto set my hand and official seal at Jacksonville, Florida, in said district this 12th day of December A. D. 1913.

[Seal District Court of the United States, Southern District of Florida.]

EUGENE O. LOCKE, *Clerk.*

Endorsed on cover: File No. 23,978. S. Florida. D. C. U. S. Term No. 318. John W. Rast, Tax Collector for Duval County, State of Florida, et al., appellants, vs. Van Deman and Lewis Company, The Harkisheimer Company, J. S. Pinkussohn Cigar Company, et al. Filed December 26th, 1913. File No. 23,978.

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SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1914.

No. 318.

JOHN W. RAST, Tax Collector for Duval County, State of Florida, *et al.*,

Appellants,

vs.

VAN DEMAN AND LEWIS COMPANY, THE HARKISHEIMER COMPANY, J. S. PINKUSSOHN CIGAR COMPANY,

Appellees.

BRIEF FOR APPELLANTS.

I. STATEMENT OF THE CASE.

This is an appeal from an interlocutory order made in the District Court of the United States for the Southern District of Florida, restraining the appellants, as Tax Collectors of each of the counties of the State of Florida, and all of the State Attorneys, County Solicitors and Prosecuting Attorneys in all of the Criminal Courts of the State, and all persons acting by, through or under

them, or by their authority, or the authority of any of them, and all other persons who may act in any of said offices, or in the place or stead of any of said appellants, from taking any action or proceeding looking to the enforcement of the provisions of the State statute imposing a license tax upon each and every person, firm or corporation, who shall offer with merchandise, bargained or sold in the course of trade, any coupon, profit-sharing certificate, or other evidence of indebtedness or liability which is redeemable in premiums.

Inasmuch as the interlocutory order sought and procured operated to suspend or restrain the enforcement of a statute of the State of Florida, the application for such order was presented to three Federal Judges, and heard by them, in compliance with the provisions of Section 266 of The Judicial Code of the United States.

An order was made restraining the said officers from the enforcement of the statute, and an appeal was thereupon taken direct to this court, as authorized by the Federal statute above referred to.

The statute complained of, the enforcement of which was enjoined, is a portion of Section 35 of Chapter 6421, Laws of Florida, which is in the following language:

> "Section 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:
>
> For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half ($1.50) dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half

($1.50) dollars for each one thousand ($1,000.00) dollars of their stock of merchandise. Provided, That the words "stock of merchandise" shall be held to mean the cash value of the merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further, That any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

"Provided further, That each and every person, firm or corporation, who shall offer with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, shall pay annually a State license tax of five hundred dollars ($500.00) and a County license tax of two hundred and fifty ($250.00) dollars in each and every county in which said business is conducted or carried on, and if more than one place of such business shall be operated by any person, firm or corporation, a separate State and County license shall be taken out for each such place; and no person, firm or corporation shall offer with merchandise, bargained or sold as aforesaid, any coupon, profit-sharing certificate or other evidence of indebtedness or liability, redeemable by any other person, firm or corporation than the one offering the same without paying the above license for each other person, firm or corporation who may redeem the same. The license prescribed in this section shall be in addition to other licenses prescribed by this Act. Any person violating any of the provisions of this section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00) dollars or by imprisonment in the county jail not exceeding six months," etc.

The procedure for the enforcement of the payment of license taxes is provided for in Section 59 of this Chapter, as follows:

> "The payment of all license taxes shall be enforced by the seizure and sale of the property by the Tax Collector, or in case of State license taxes payable either to the State Treasurer or Comptroller, by the State Treasurer or Comptroller, as the case may be, and it is hereby made the duty of the Tax Collector and County Judge to report to the Comptroller and State Attorneys any violation of this Act."

It is averred in appellees' bill of complaint and contended by them that the statute imposing license taxes contravenes and violates certain enumerated provisions of the Constitution of the State of Florida, the commerce clause of the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, and various other provisions of the Federal Constitution referred to in the bill of complaint.

The prayer of the bill of complaint, in so far as it is sought to restrain the officers named from proceeding to enforce the provisions of the statute complained of, is as follows:

> "That each of said defendant Tax Collectors hereinabove named, as such Tax Collector, and each of said defendant State's Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinbefore named, as such County Solicitor, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such prosecuting attorney, and all persons, acting by, through or

under them or by their authority or the authority of any of them, and all other persons who may act in any of said offices or in place or stead of any of said defendants or under or by virtue of any of said provisions of said section 35 of said statute of the State of Florida, herein complained of, be restrained and enjoined by the restraining order of this Honorable Court, or that may be granted by your Honor, and by an interlocutory injunction out of and from this Honorable Court or injunction during the pendency of this suit and by permanent and perpetual injunction from and issuing out of this Honorable Court, and that complainants and each of them be granted and have any and all proper writs of injunction, accordingly, restraining and enjoining them and each and every of them, from collecting or attempting to collect from said complainants or any of them, or from any person, firm or corporation similarly situated said license taxes or any of them, or any part thereof, mentioned or provided for in Section 35 in said statute of the State of Florida for or because of or on account of offering, giving, selling or delivering with merchandise or using any coupon, slip, certificate, or other evidence of indebtedness or liability or like device or token, and from levying on, seizing, selling or interfering with any property of said complainants or any of them or any other person similarly situated, for the purpose of collecting said license taxes or any of them, or any part thereof, and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this bill of complaint, or the making or issuance of any such restraining order or injunction herein or on any indictment or information

found or filed thereafter, for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said complainants, or any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the complainants or any of them, or any other person, firm or corporation similarly situated, or their respective businesses, by reason or because of said license taxes and said provisions of said statute hereinabove mentioned. That complainants may have any proper order to the defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not isssue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit." (Transcript of Record, pp. 23-24.)

The further prayer is that the statute and all enactments and provisions thereof providing or imposing a fine or imprisonment for any violation thereof may be declared and decreed to be unconstitutional, illegal, and void; and for general relief.

Upon a hearing of this application, it was ordered that the interlocutory injunction issue as prayed in and by said bill of complaint. (Transcript of Record, pp. 38 to 44.)

II. ARGUMENT.

1. The case presented is not within the cognizance of the equity jurisdiction of the Federal Courts.

From the great number of grounds of attack made upon

this statute, one is led to suspect that appellees have little confidence in any single one of them. It is hardly probable that a statute of this kind, designed, it may be, both for regulation and revenue purposes, could be drafted so as to contravene all the various constitutional provisions enumerated in the bill of complaint.

Before taking up the question of the constitutional validity of the statue, however, it is essential that certain preliminary questions be considered.

We respectfully urge that a court of equity has no jurisdiction to hear and determine this case, for the following reasons:

2. No Ground for Equitable Interposition is Shown to Exist as Against the Tax Collectors.

The officers sought to be enjoined are the Tax Collectors of each of the counties in the State of Florida, and each of the prosecuting officers in all of the courts of the State of Florida having jurisdiction in criminal cases.

The Tax Collectors have imposed upon them the duty of collecting the tax. If the tax is not paid voluntarily, they proceed under the provisions of Section 59 of Chapter 6421, to enforce collection of it, by the seizure and sale of the property of the person engaged in the occupation upon which the tax is laid.

The prosecuting officers have nothing to do with the collection of this tax. They proceed to enforce the statute by criminal prosecution. As to them the statute is a criminal statute, and is enforced by them in precisely the same manner as all other criminal statutes are enforced

If a person, firm or corporation offers with merchandise bargained or sold in the course of trade any coupon, profit-sharing certificate, or other evidence of indebtedness or liability, redeemable in premiums, without having first paid the license tax imposed by the statute, it becomes the duty of the Tax Collector to enforce payment of such taxes by seizure and sale of the property of such person. It appears from the bill of complaint in this case that the property which the Tax Collectors are restrained from seizing is personal property.

The highest appellate court in the State of Florida, the Supreme Court, has settled the question there, that a court of equity will not interfere to restrain by injunction a seizure and sale of property in a case of this kind; and this suit could not, therefore, be maintained in a court of equity of the State of Florida.

In the case of Odlin vs. Woodruff, County Tax Collector, 31 Fla. 160, the complainant, who was an attorney-at-law, sought to enjoin in a court of equity the tax collector of the county, in which he was engaged in the practice of his profession, from the seizure and sale of his personal property, to enforce the payment of a license tax imposed upon the occupation in which he was engaged. The statute there was assailed as being obnoxious to the provisions of the Constitution of the United States..

The Supreme Court of the State, in passing upon the question, held:

> "That the court of equity has no jurisdiction to interfere by injunction to restrain trespass upon personal property, except in rare cases where the property trespassed upon or taken has some peculiar in-

trinsic value to the owner that could not be compensated in money, and that the remedy is at law, is well settled in this State as elsewhere. Baldwin vs. Tucker, 16 Fla. 258, and authorities there cited.

"If the contention of the appellant in his bill is true, that the statute imposing this tax upon his exercise of his profession as a lawyer is unconstitutional, then the levy by the tax collector upon his goods for the enforcement of such tax would amount to a trespass, for the redress of which there is ample remedy at law; and he has no standing in a court of equity. The demurrer to his bill was, therefore, properly sustained, and the dismissal of the bill properly followed."

In the case of Florida Packing and Ice Company vs. Carney, Tax Collector, 49 Fla. 293, the complainant sought to enjoin the county tax collector from seizing, levying upon, holding, advertising or selling any of his property to enforce the payment of a license tax imposed upon the occupation in which it was engaged. It appears in this case that complainant's property, which it sought to protect from seizure and sale, was personal property. In considering the case, the Supreme Court again said:

"The decision of the court below was substantially upon the merits of the controversy, when in fact it should have abstained from any consideration of the merits and should have sustained the demurrer and dismissed the bill upon the first ground thereof alone, *viz*: that there was no equity in the bill, without passing upon the merits of the case. This court in divers cases has settled the rule beyond further controversy, that a court of equity will never interfere to restrain by injunction a levy upon, and

sale of *personal* property, unless the same is of such peculiar and intrinsic value to the owner that its loss cannot be compensated adequately in damages, and that the remedy in such cases is at law by an action of trespass, or other appropriate remedy in the courts of law. And it has further been settled by repeated decisions here that where it is apparent to the appellate court upon the face of a bill that it does not state a case cognizable in a court of equity, it will dismiss such bill for want of equity, even though the question of equitable jurisdiction was not presented by the pleading or raised before the appellate court."

In the case of Metcalf vs. Martin, County Tax Collector, 54 Fla. 531, the complainant sought to restrain the tax collector from the seizure and sale of its property for the purpose of enforcing the payment of the license tax imposed upon the occupation in which it was engaged. It appears in this case that the complainant, which was engaged in the liquor business, had refused to pay its license tax, and the tax collector had seized and threatened to sell its equipment, fixtures, etc.

In considering this case, the court said:

"A court of equity should not entertain a bill for an injunction against a tax collector who threatens to seize and sell personal property except in rare cases where the property is peculiarly valuable and cannot be compensated adequately in damages. This is true even if the officer is acting without lawful authority, as such seizure is a mere trespass remediable by action at law." (Citing cases.)

"Where an injunction is prayed on the ground of irreparable injury the bill of complaint should allege facts to enable the court to determine whether the

injury will be irreparable. A mere general allegation that the injury will be irreparable is not sufficient. When the facts alleged do not show that irreparable injury will be sustained an injunction should not be granted." (Citing cases.)

"Where it is apparent to an appellate court that a bill of complaint does not state a case cognizable in a court of equity, it is the duty of the court to notice the defect, even though the question of equitable jurisdiction is not presented in the pleading or otherwise called to the attention of the trial or appellate court." (Citing cases.)

"The facts alleged to show that irreparable injury will be sustained if injunction does not issue to restrain the sale of barroom fixtures are that complainant's business of selling liquor in a particular building will be entirely broken up and destroyed and that the barroom fixtures can only be replaced at great cost and by ordering from a great distance and after long delay, and that the same are absolutely essential to the business. This does not show an injury will result which cannot be fully compensated in damages by an action at law; but the facts rather tend to show such compensation will be adequate and complete for any loss complainant might sustain even if the action of the tax collector be illegal. Under these circumstances the bill should have been dismissed by the court even though no demurrer was interposed to the bill. There is no equity shown to decree the complainant exempt from the payment of the license tax demanded by the tax collector."

These cases, we think, clearly show that a court of equity has no jurisdiction to hear and determine this case. It is certain that if any one of the appellees had undertaken to restrain the appellants, or any one of them, that

a court of equity would hold that it had no jurisdiction to entertain the suit; and the fact that a number of persons may be interested cannot change this principle, because there is no joint interest in their several complaints. It may be that scores of persons or firms engaged in the occupation, upon which this license tax is imposed, would be affected by the enforcement of the statute, but its enforcement as to any single one of them could not affect any other one or more of them.

The rule laid down by the Supreme Court of the State of Florida is the general rule on the subject. And, although the statute complained of may be unconstitutional, which we of course do not concede, but deny, this alone is not sufficient to entitle a party to relief by injunction against proceedings in compliance with the terms of such statute.

This court has held, in a case similar to the Florida cases above referred to, that:

> "It is settled that the mere fact that a law is unconstitutional does not entitle a party to relief by injunction against proceedings in compliance therewith, but it must appear that he has no adequate remedy by the ordinary processes of the law or that the case falls under some recognized head of equity jurisdiction."
>
> Cruickshank v. Bidwell, 176 U. S. 73, at p. 80.

This is peculiarly true in considering the validity of a State taxing statute.

The general rule on this subject is expressed by Judge Cooley as follows:

"To entitle a party to relief in equity against an illegal tax, he must by his bill bring his case under some acknowledged head of equity jurisdiction. The illegality of the tax alone, or the threat to sell property for its satisfaction, cannot, of themselves, furnish any ground for equitable interposition. In ordinary cases a party must find his remedy in the courts of law, and it is not to be supposed he would fail to find one adequate to his proper relief."

Cooley on Taxation, p. 936
Cooley on Taxation (3rd Ed.) 1411-12.

It is settled in this Court that:

While an unconstitutional tax may confer no right, impose no duty, and support no obligation, the trespass resulting from proceedings to collect such void tax cannot be restrained by injunction, where irreparable injury or other ground for equitable interposition is not shown to exist.

Shelton v. Platt, 139 U. S. 591.
Allen v. Pullman's Palace Car Co., 139 U. S. 658.
Pacific Express Co., v. Seibert, 142 U. S. 339.
Pittsburgh &c. Railway Company v. Board of Public Works, 172 U. S. 32.
Arkansas Building & Loan Association v. Madden, 175 U. S. 269.

The rule announced here, with regard to statutes imposing taxes, applies in this case.

A statute may perform the double function of regulating the business under the police power, and of producing revenue, if authorized by the law of the State, and this is such a statute.

Harrison v. Kersey, 67 Fla. 24.
Bradley v. City of Richmond, 227 U. S. 477.
Gundling v. Chicago, 177 U. S. 183.

We respectfully submit that there is nothing in appellees' bill of complaint to take this case out of the class controlled by the general rule laid down in the authorities; and certainly a different rule from that applied by the courts of Florida to others occupying precisely the same position should not be adopted by a Federal Court in this case, because a number of persons are permitted to come in together and submit separate and distinct issues as to each of them, in which there is no joint interest, in a single proceeding as is done here.

The averments of the bill of complaint do not show irreparable injury to the appellees, or any of them, under the general rule on the subject in cases of this character.

Metcalf Co. v. Martin, *supra.*

The question of what is an adequate remedy at law in the class of cases cited from the Florida Supreme Court may suggest itself.

It is not incumbent upon us to answer this question here, because the burden of showing that there is no such remedy rests upon him who comes into a court of equity. The State Court has said that, in such cases, equity has no jurisdiction because an adequate remedy at law exists.

After the decision by the Supreme Court of the State in the case of Florida Packing & Ice Co. vs. Carney, *supra*, the plaintiff brought a suit at law against the defendant as Tax Collector of Marion County for the recovery of the amount of damages sustained by it as the result of the alleged improper and unlawful seizure of its property by the Tax Collector in an effort to collect the license tax claimed to be due by the plaintiff. When the case reached

the Supreme Court it was held that an action of that kind for that purpose would lie.

Florida Packing & Ice Co. vs. Carney, 51 Fla. 190.

One remedy, therefore, is an action at law against the officer. It might also be suggested that a suit in trover and conversion, or of replevin, would also lie against a purchaser of the property so seized and sold.

(3) A COURT OF EQUITY HAS NO JURISDICTION TO RESTRAIN THE PROSECUTING OFFICERS NAMED, BECAUSE ANY ACTION TAKEN BY THEM LOOKING TO THE ENFORCEMENT OF THE PROVISIONS OF THIS STATUTE IS A CRIMINAL PROCEEDING, AND TO ENJOIN THEM IS TO ENJOIN THE STATE FROM PROCEEDING IN ITS OWN COURTS.

The portion of the statute prescribing and imposing penalties for engaging in the business defined in the statute, is in the following language:

> "Any person violating any of the provisions of this Section, whether acting for himself or as the agent of another, shall on conviction thereof be punished by fine not exceeding one thousand ($1,000.00.) dollars or by imprisonment in the county jail not exceeding six months."

The prayer of the bill of complaint with reference to said prosecuting officers is in the following language:

> "and each of said defendant States Attorneys, hereinabove named, as such State Attorney, and each of said defendant County Solicitors, hereinabove named,

as such County Solicitor, and each of said defendant Prosecuting Attorneys, hereinbefore named, as such prosecuting attorney, and all persons acting by, through or under them or by their authority or the authority of any of them, * * * and from causing, beginning or instituting any prosecution, information, indictment, arrest, imprisonment, or any other criminal proceeding or carrying on or prosecuting any such that may be instituted or begun, after the filing of this bill of complaint, or the making or issuance of any such restraining order or injunction herein or on any indictment or information found or filed thereafter for the purpose of collecting or causing to be paid said license taxes or any of them, or any part thereof, or of punishing, fining or imprisoning or causing the same to be done of said complainants, or of any of them, or of any other person, firm or corporation similarly situated and from causing any of said things to be done and from taking any other action or in any other manner interfering with the complainants or any of them, or any other person, firm or corporation, similarly situated, or their respective businesses, by reason or because of said license taxes and said provsions of said statute hereinabove mentioned. That complainants may have any proper order to the defendants to show cause herein why an interlocutory injunction or an injunction during the pendency of this suit should not issue as prayed for herein and all other suitable or proper orders in the premises and in the prosecution of this suit." (Transcript of Record, pp. 23-24.)

It is provided by the Constitution of the State of Florida that all prosecutions shall be conducted in the name and by the authority of the State.

Constitution of Florida, Article V, Section 37.

The Supreme Court of the State of Florida, in discussing the design and purpose of this provision of the Constitution, used this language:

> "This clause, which is to be found in most if not all the Constitutions of the States which took part in the formation of the government, was inserted to exclude the idea that any other, either local authority or foreign power, should exercise this authority of prosecuting for crimes under State laws. *It was to assert the sovereignty and supremacy of the State in matters of this kind.*" (Italics ours.)
>
> Ex Parte Nightengale, 12 Fla. 274.

This court in considering the question of the power of a court of chancery to restrain criminal proceedings, in the case of In re. Sawyer, 124 U. S. 200, at p. 211, said:

> "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restrain criminal proceedings, unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there. (Citing cases.)
>
> "Mr. Justice Story, in his Commentaries on Equity Jurisprudence, affirms the same doctrine. Story Eq. Jur. sec. 893. And in the American courts, so far as we are informed, it has been strictly and uniformly upheld, and has been applied alike whether the prosecutions or arrests sought to be restrained arose under statute of the State, or under municipal ordinances. (Citing cases.)"

In enjoining the State's prosecuting officers from prosecuting for violations of this statute, the court must pro-

ceed in violation of the principle stated in the foregoing authorities, and must restrain proceedings in the name of the sovereign State looking to the enforcement or testing, in its own courts, of a statute duly adopted by the legislative branch of the State government.

I submit that such proceeding is unauthorized, that it is contrary to the whole scheme of our government, and that it was never intended that any such authority should be exercised by the Federal Courts.

This court in considering this question at length, in the comparatively recent case of Fitts v. McGhee, 172 U. S. 516, at pp. 531-2, said:

> "It remains only to consider the case so far as the final decree assumes to enjoin the officers of the State from instituting or prosecuting any indictment or criminal proceedings having for their object the enforcement of the statute of 1895. We are of opinion that the Circuit Court of the United States, sitting in equity, was without jurisdiction to enjoin the institution or prosecution of these criminal proceedings commenced in the State Court. This view is sustained by In re Sawyer, 124 U. S. 200, 209, 210. It was there said: 'Under the Constitution and laws of the United States, the distinction between common law and equity, as existing in England at the time of the separation of the two countries, has been maintained, although both jurisdictions are vested in the same courts. Fenn v. Holme, 21 How. 481, 484-487; Thompson v. Railroad Companies, 6 Wall. 134; Heine v. Levee Commissioners, 19 Wall. 655.' Again. 'The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of

crimes and misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative departments of the government.' At the present term of the court, in Harkrader v. Wadley, 172 U. S. 148, 169, 170, we said: 'In proceeding by indictment to enforce a criminal statute the State can only act by officers or attorneys, and to enjoin the latter is to enjoin the State.' Again: 'Much more are we of opinion that a Circuit Court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a State court in the name of a State to enforce the criminal laws of such State.' Undoubtedly, the courts of the United States have the power, under existing legislation, by writ of *habeas corpus* to discharge from custody any person held by State authorities under criminal proceedings instituted under State enactments, if such enactments are void for repugnancy to the Constitution, laws or treaties of the United States. But even in such case we have held that this power will not be exercised, in the first instance, except in extraordinary cases, and the party will be left to make his defense in the State court. Ex parte Royall, 117 U. S. 241; New York vs. Eno, 155 U. S. 89; Whitten v. Tomlinson, 160 U. S. 231; Baker v. Grice, 169 U. S. 284."

The case of Ex parte Young, 209 U. S. 123, is differentiated from this case in that it comes squarely within the exception to the general rule, as announced in the case of In re Sawyer, *supra*, at p. 211, as follows:

> "The modern decisions in England, by eminent equity judges, concur in holding that a court of chancery has no power to restain criminal proceedings, *unless they are instituted by a party to a suit already pending before it, and to try the same right that is in issue there.*" (Italics ours.)

I would call attention also to the following language used in the case of Fitts vs. McGhee, *supra*, at p. 532:

> "That the defendants may be frequently indicted constitutes no reason why a Federal Court of equity should assume to interfere with the ordinary course of criminal procedure in a State court."

In the instant case there is no suggestion, and there could be none, that those violating the statute would be "frequently indicted." All that could be done would be to indict each of them one time. What probably would be done would be to indict one of them one time In this way the law would be tested and the question settled in the State courts in the simplest manner and within a very short time.

If the statute is in fact obnoxious to any of the provisions of the State or Federal Constitution, upon arrest for a violation of its provisions, the persons arrested could sue out a writ of *habeas corpus* in the Supreme Court of the State, and have the question of the validity of the statute finally settled by that Court in the shortest possible time.

Constitution of Florida, Article V, Section 5.

It can hardly be denied that there is an adequate remedy at law for appellees as against any action taken by

the State's prosecuting officers, and that as to them this suit should be dismissed.

We come now to consider the principal question on its merits, that is to say, the question of the constitutional validity of the statute.

4. A PART OF THE BUSINESS CONDUCTED BY THE APPELLEES BEING WHOLLY INTRASTATE, THE ENFORCEMENT OF THE STATUTE CANNOT VIOLATE THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION.

We do not concede that any part of the business of appellees as conducted is interstate commence, but if it should be so held, to incidentally or indirectly affect it would not of necessity violate the commerce clause of the Federal Constitution.

But, be that as it may, it is apparent from the averments of the bill of complaint that there is a legitimate field for the operation of this statute without in any wise affecting interstate commerce. It appears that some of the business of the appellees is conducted wholly within the State of Florida, that the coupons, slips, certificates or tokens given with sales of merchandise made within the State of Florida are also redeemed within the State of Florida.

Paragraph IV of the bill of complaint is as follows:

> "Complainants further allege that there are divers forms and methods of use of coupons, slips, certificates or tokens, in connection with the sale of merchandise used by merchants of the State of Florida,

substantially in similar form to those mentioned above, in which above-mentioned cases the payment or redemption in premiums is made or given outside of the State of Florida, but in the class of cases now being stated the payment or redemption is made by the Florida merchant, in the State of Florida, sometimes by the delivery of some valuable article of merchandise; sometimes by the payment of cash or the allowance of credit on account of purchase, being in the nature of a discount or for or on account of a certain amount having been purchased by the merchant by the customer. These certificates or tokens in addition to being in the form of coupons or certificates, as above mentioned, sometimes are in the form of a cash register slip or memorandum and are in various other forms." (Transcrip of Record, p. 10.)

As to that portion of the business of the appellees conducted, as outlined in this paragraph, there can be no doubt that this tax may be legally imposed.

In the case of Osborne v. Florida, 164 U. S. 650, in considering a license tax statute of the State of Florida, this court held, in affirming an opinion of the Supreme Court of the State of Florida, that one conducting a business partly interstate and partly intrastate should not be held immune from taxation by the State on that portion of his business wholly intrastate because a portion of the business so conducted was interstate. In this case it was conceded that ninety-five per cent. of the business of plaintiff in error was interstate and that only five per cent. was intrastate.

The presumption is that the Legislature intended to tax only that which it constitutionally might tax.

Singer Sewing Machine Co. v. Brickell, 233 U. S. 304.

It has been further held by this court that it is not within the power of the parties by the form of their contract to convert what is exclusively a local business, subject to State control, into an interstate commerce business protected by the commerce clause of the Federal Constitution.

Browning v. City of Waycross, 233 U. S. 16.

It is settled here that a State may adopt measures of a reasonable character in the interest of health, safety, morals and welfare of its people, although interstate comference may incidentally or indirectly be involved and affected.

The Minnesota Rate Cases, 230 U. S. 205.
Savage v. Jones, 225 U. S. 501.
Plumley v. Massachusetts, 155 U. S. 461.

5. THE STATUTE IS NOT IN CONTRAVENTION OF THE PROVISIONS OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

It will be noted that the court below held the statute to be invalid and uninforceable because in violation of the provisions of the Fourteenth Amendment to the Federal Constitution.

The principal authority relied upon by counsel for appellees in presenting the case to the court below, and by the court in its written opinion, is the case of Little *et al.* vs. Tanner, Attorney General, *et al.*, 208 Fed. 605. This is a case from the Eastern District of the State of Washington, recently decided, and involves the question of the constitutional validity of a statute passed by the legisla-

ture of the State of Washington, similar in some respects but materially different in others from the statute of the State of Florida, as will appear by a comparison of the two statutes.

It so happens that the parties objecting to the enforcement of the Washington statute did not make their complaint comprehensive enough as to parties defendant to tie the hands of all the State officers whose duty it is to enforce the payment of the tax imposed or prosecute for a failure to pay it, and, as a result, the question of the validity of the statute was also presented to the State courts for consideration and decision. When the case reached the Supreme Court of the State, that court, reversing the judgment of the lower court, held the statute to be valid and a legitimate exercise of the police power of the State.

State v. Pitney, — Wash. —, 140 Pac. 918.

It may be that the weight of judicial authority on this subject is not in accord with the views expressed in this decision, but I submit that the judgment of the Supreme Court of the State, holding the statute to be valid, tends substantially to weaken the force and weight of the decision of the Federal Judges, on the same question, which, as we have stated, is the principal authority for the decision from which this appeal is taken, and, may I submit further here, that the attitude of this State court is in harmony with the spirit and substance of the thought made prominent in the addresses of the great leaders of the bar of this country at the last meeting of the American Bar Association, namely, that principle rather that precedent should be the guide in the consideration and determination of questions of this character.

There are, however, respectable authorities holding statutes prohibiting the business, or imposing license taxes upon merchants using trading stamps, as valid and enforceable.

Lansburg v. District of Columbia, 11 App. D. C. 512.
Humes v. Ft. Smith, 93 Fed. 857.
Wilder v. Quebec, Rap. Jud. Quebec, 25 C. S. 128.
State v. Pitney, *supra*.

The great number of cases on the subject in which acts of the legislature or ordinances of municipalities imposing license taxes upon, or prohibiting entirely the trading stamp business, show that there is a deep-seated conviction of the necessity, and a wide-spread demand on the part of the people of the country for such legislation. This is further evidenced by numerous resolutions of chambers of commerce, boards of trade, merchants' associations, and other public bodies, and the several bills that have been introduced in the Congress of the United States on this subject.

If debates and records of Congress may be resorted to for the purpose of showing that which prompted legislation (Tap Line Cases, 234 U. S. 1; Loewe v. Lawlor, 208 U. S. 274), then it may be ascertained that the wide-spread public demand on the part of the people of the country for legislation of this kind is making itself felt, not only in the legislative bodies of the municipalities and of the States, but in the Congress of the United States. H. R. 15958, introduced by the leader of the dominant party in Congress at this time, is similar in its general tenor and effect, although more limited in the class to which it applies than the Florida statute on the subject,

but, generally speaking, the principle involved is the same.

In view of this condition there would seem to be no warrant for the courts to set up their judgments against the judgment of the legislative authority of the country for the necessity of legislation regulating the conduct of this occupation.

That the courts may take notice of the wide-spread demand for legislation on this subject is well settled here.

In considering the question of the validity of a statute of a character somewhat similar to this statute, this court in the case of Otis v. Parker, 187 U. S. 606, at p. 609, said:

> "Even if the provision before us should seem to us not to have been justified by the circumstances locally existing in California at the time when it was passed, *it is shown by its adoption to have expressed a deep-seated conviction on the part of the people concerned as to what that policy required.* (Italics ours.) If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear unmistakable infringement of rights secured by the fundamental law.' Booth v. Illinois, 184 U. S. 425, 429. No court would declare a usuary law unconstitutional, even if every member of it believed that Jeremy Bentham had said the last word on that subject, and had shown for all time that such laws did more harm than good. The Sunday laws, no doubt, would be sustained by a bench of judges, even if every one of them thought it superstitious to make any day holy. Or, to take cases where opinion has moved in the opposite direction, wagers may be declared illegal without the aid of

statute, or lotteries forbidden by express enactment, although at an earlier day they were thought pardonable at least. The case would not be decided differently if lotteries had been lawful when the Fourteenth Amendment became law, as indeed they were in some civilized States. See Ballock v. State, 73 Maryland 1."

In a more recent case of Central Lumber Company v. South Dakota, 226 U. S. 157, at p. 160, this court said:

"If the Legislature shares the now prevailing belief as to what is public policy and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed." (Citing cases.)

And further, at page 161:

"If the Legislature thought that that particular manifestation of ability usually came from great corporations whose power it deemed excessive and for that reason did more harm than good in their State, and that there was no other case of frequent occurrence where the same could be said, we cannot review their economics or their facts. *That the law embodies a wide-spread conviction appears from the decisions in other States.*" (Citing cases.) (Italics ours.)

In the case of Purity Extract Co. v. Lynch, 226 U. S. 192, at pp. 204-205, this court said:

"That the opinion is extensively held that a general prohibition of the sale of malt liquors, whether intoxicating or not, is a necessary means to the suppression of trade in intoxicants, sufficiently appears from the legislation of other States and the decision of the courts in its construction. (Citing cases.) *We cannot say that there is no basis for the wide-spread conviction.*" (Italics ours.)

6. THERE IS A JUST BASIS FOR THE CLASSIFICATION MADE BY THIS STATUTE.

The rules for testing this question are laid down by this court in the case of Lindsley vs. Natural Carbonic Gas Co., 220 U. S. 61, as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing it does not rest upon any reasonable basis but is essentially arbitrary."

In holding that a statute of this kind is within the legislative power of a State, the Supreme Court of Washington, in the case of State vs. Pitney, *supra*, said:

> "it follows then that if a state of facts could exist which would justify the legislature in forbidding the use of trading stamps, it must be presumed to have actually existed. What state of facts might reasonably have prompted the legislature to forbid the use of trading stamps in connection with the sale of merchandise. It might reasonably be supposed or presumed that the legislature believed that the use of these stamps would encourage indiscriminate and unnecessary purchasing by people ill able to indulge in any extravagance. Or suppose that the legislature believed that the use of these stamps was practically forced upon certain merchants without any practical benefit resulting thereon, and thus they were compelled to pay 3½% upon their gross sales for the use of the stamps. The legislature might reasonably have believed that the stamp companies, in order to cause stamps to be used in a certain city, would contract with one merchant for their use, agreeing to pay him a per centage of the sums collected by them from other merchants, and then use the first contract so secured to force other merchants into using the stamps, or suffer loss of trade by failure so to do. In other words, that legitimate business was virtually coerced into paying tribute to the stamp company, a nonproducer of wealth or value."

Something of the character of the business of trading stamp companies and the evil sought to be remedied by the legislation on the subject may be seen from the decision of the Court of Appeals of the District of Columbia

in the case of Lansburg vs. District of Columbia, 11 App. D. C. 512, in which the statement is made, at page 531, that:

> "Their business is the exploitation of nothing more or less than a cunning device. With no stock in trade but that device and the necessary books and stamps and so-called premiums with which to operate it successfully, they have intervened in the legitimate business carried on in the District of Columbia between seller and buyer, not for the advantage of either, but to prey upon both. They sell nothing to the person to whom they furnish the premiums. They pretend simply to act for his benefit and advantage by forcing their stamps upon perhaps an unwilling merchant who pays them in cash at the rate of $5.00 per thousand. The merchant who yields to their persuasion does so partly in the hope of obtaining the customer of another, and partly through fear of losing his own if he decline."

And further, at page 532:

> "There is not a shadow of rational foundation for the stamp company's claim that it confers a benefit upon buyers by procuring for them an actual discount. If its business were to continue and its contract faithfully performed, its inevitable result would be as in all necessary interventions of third persons or 'middlemen,' between merchants and consumer, and increase the cost to the latter."

While not in the record in this case, it is nevertheless true that the retail merchant is not opposing this statute and is not making the fight to overthrow it. The fight

is being made largely—perhaps I would be wholly within the bounds of truth to say entirely—by the coupon companies and wholesale dealers who are profiting by business sustained and supported by the consumer who is, in addition to paying for the merchandise in which the coupons are placed—frequently actual necessities—also paying the expenses incident to the carrying on of the coupon business and the price of the premiums, which he is frequently misled into believing are being given to him gratis, and which he would not purchase except under cover of the business upon which this tax is imposed, and which are frequently of little and probably of no value to him.

It has been said that:

> "The subjects for the exercise of the police power are, first, preservation of the public health; second, preservation of the public morals; third, regulation of business enterprises; fourth, regulation of civil rights of individuals, and, fifth, the general welfare and safety of the citizens."
>
> Commonwealth v. Reinecke Coal Mining Co., (Ky.) 79 S. W. 287.

This court has said:

> "It may be said in a general way that the police power extends to all the great public needs. Camfield v. United States, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare."
>
> Noble State Bank v. Haskell, 219 U. S. 104, at p. 111.

The learned author of Freund on Police Power has laid down this rule:

> "From the mass of the decisions, in which the nature of the power has been discussed, and its application either conceded or denied, it is possible to evolve at least two main attributes or characteristics which differentiate the police power; it aims directly to secure and promote the public welfare, and it does so by restraint and compulsion. It will be necessary to offer a few general observations upon these two points, bearing in mind that it is not by general statements, but only by a detailed examination of statutes and decisions that the power can be fully understood and defined. Such an examination will show what has been done and what has been approved by experience, what has been attempted and has failed, what has been surrendered, and what is aimed at and in process of being accomplished. It will reveal the police power not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i. e., capable of development."
>
> Freund Police Power, Sec. 3.

If the police power extends to all the great public needs, and may be exercised for the general welfare and safety of the citizens of a State, and must continue to be elastic and capable of development, can it be said now, in the light of the "maxim of constitutional law that a Legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole" (Atchison, Topeka, etc., Railroad v. Mathews, 174 U. S. 96, at p. 104),

that the legislature of Florida transcended its powers in imposing a license tax upon an occupation which must of necessity, in its ordinary conduct, place unnecessary burdens upon all the citizens of the State and require that they in purchasing the necesaries of life shall also purchase the so-called premiums or prizes of the coupon companies in order to make possible a business for such companies, which exists, not of necessity nor for the public good, but solely for gain on behalf of those engaged in the business and at the expense of the public.

It is consistent with reason that this business as ordinarily conducted operates upon, and affects the public, as we have suggested; and,

> "This court will assume the existence at the time the statute was enacted of any state of facts that can reasonably be conceived and which will support a classification in a State statute attacked as denying equal protection of the law."
>
> Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61.

The legislature is primarily the judge of the necessity for legislation of this kind.

On this subject this court has held:

> "The legislature being familiar with local conditions is, primarily, the judge of the necessity of such enactments. The mere fact that a court may differ with a legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in question, affords no ground for judicial interference, unless the act in

question is unmistakably and palpably in excess of legislative power." (Citing cases.)

McLean v. Arkansas, 211 U. S. 539, at p. 547.

The court below held that there was no just basis for the classification made by the statute complained of; that it was an arbitrary selection of one merchant for the imposition of a "greater burden" than that imposed on others in the same calling and condition (Transcript of Record, p. 43).

As we have seen the principal case relied upon by the court below in the case of Little *et al.* v. Tanner, Attorney General, *et al.*, 208 Fed. 605. It is worthy of note that although the court held the statute to be in violation of the Federal Constitution, not a single case from this court was cited in support of the holding. All, except one, of the cases cited are from State courts, and most of them are cases in which the validity of municipal ordinances, and not State statutes, were considered.

It is settled here, and in Florida, that there is no limitation upon the power of the Legislature to determine what occupations shall be subjected to licenses and taxed, save those of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

Bradley v. City of Richmond, *supra.*
Ferguson v. McDonald, 66 Fla. 496.

It is also settled in Florida and here that a statute imposing a license tax is not invalid and unenforceable because unconstitutional, for the reason that other li-

cense or occupational taxes are imposed by other statutes upon the same occupation.

Afro-American Industrial & Benefit Association v. State, 61 Fla. 85.

Peninsular Industrial Insurance Co. v. State. 61 Fla. 376.

Peninsular Casualty Co. v. State (Fla.), not yet reported.

The Pullman Co. v. Knott, 235 U. S. 23.

If there is a reasonable basis for the classification made by this statute,—and, as we have seen, the appellees must carry the burden of showing that the classification made by the statute does not rest upon any reasonable basis, but is essentially arbitrary,—then the judgment from which this appeal is taken must be reversed. When the character of the business or occupation upon which this tax is imposed is considered, we believe it will appear that there is a clear, reasonable and substantial distinction on which to base a classification either under the police or taxing power of the State, between merchants using the coupons, profit-sharing certificates, and the like, in the manner defined in this statute, and merchants who do not use such coupons or profit-sharing certificates.

The fact that the statute may not affect all alike does not determine the question of constitutionality.

This court has held:

> "The Legislature, having the power of classification, has also the power to select the differences on which to base the classification. The State is not bound to rigid equality by the equal protection provision of the Fourteenth Amendment; classification

simply must not be exercised in clear and hostile discrimination between particular persons and classes."
Citizens Telephone Co. v. Fuller, 229 U. S. 322.

In the case of Atchison, Topeka, etc., Railroad v. Mathews, 174 U. S. 96, at p. 106, it was said:

"Indeed, the very idea of classification is that of inequality, so that it goes without saying that the fact of inequality in no manner determines the matter of constitutionality."

In the case of Quong Wing v. Kirkendall, 223 U. S. 59, in upholding as valid and constitutional a statute of the State of Montana imposing the payment upon all persons engaged in the laundry business other than the steam laundry business, with a proviso that it should not apply to women so engaged where not more than two women were employed, at page 62, this court said:

"A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restrictions and in less degree, a State may carry out a policy, even a policy with which we might disagree. McLean v. Arkansas, 211 U. S. 539, 547; Armour Packing Co. v. Lacy, 200 U. S. 226, 235; Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 92, 95; Williams v. Fears, 179 U. S. 270, 276; W. W. Cargill Co. v. Minnesota, 180 U. S. 452, 469. It may favor or discourage the liquor traffic, or trusts.

> The criminal law is a whole body of policy on which States may and do differ. If the State sees fit to encourage steam laundries and discourage hand laundries that is its own affair. And if again it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. Muller v. Oregon, 208 U. S. 412. It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a higher burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate for the former, the Fourteneth Amendment does not interfere by creating a fictitious equality where there is a real difference."

In the case of Patsone v. Pennsylvania, 232 U. S. 138, in upholding as valid and constitutional a statute of the State of Pennsylvania, making it unlawful for any unnaturalized foreign born resident to kill any wild bird or animal, except in defense of personal property, and to effectuate this purpose making it unlawful for such foreign born person to own or be possessed of a shotgun or rifle, this court, at page 144, said:

> "The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a State may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question

is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 80, 81. The State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' Central Lumber Co. v. South Dakota, 226 U. S. 157, 160; Rosenthal v. New York, 226 U. S. 260, 270; L'Hote v. New Orleans, 177 U. S. 587. See further Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36. The question, therefore, narrows itself to whether this court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. Barrett v. Indiana, 229 U. S. 26, 29."

In the case of Metropolis Theater Co. v. Chicago, 228 U. S. 61, at pp. 69-70, this court stated the rule as follows:

"In other words, there is natural relation between the price of admission and revenue, some advantage certainly that determines the choice. The distinction obtains in every large city of the country. The reason for it must, therefore, be substantial, and if it be so universal in the practice of the business it would seem not unreasonable if it be adopted as the basis of governmental action. If the action of government have such a basis it cannot be declared to be so palpably arbitrary as to be repugnant to the Fourteenth

Amendment. This is the test of its validity, as we have so many times said. We need not cite the cases. It is enough to say that we have tried, so far as that Amendment is concerned, to declare in words, and the cases illustrate by example, the wide range which legislation has in classifying its objects. To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require rough accommodations—illogical, it may be, and unscientific. But even such criticisms should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void under the Fourteenth Amendment; and such judgment cannot be pronounced of the ordinance in controversy. Quong Wing v. Kirkendall, 223 U. S. 59."

This court in the case of Citizens' Telephone Co. v. Fuller, *supra,* after referring to a number of its former decisions on this subject, laid down this rule:

"They illustrate the power of the Legislature of the State over the subjects of taxation and the range of discrimination which may be exercised in classifying those subjects when not obviously exercised in a spirit of prejudice and favoritism. Cook v. Marshall County, 196 U. S. 261, 274; Missouri v. Dockery, 191 U. S. 165. The cases decided subsequent to the decision in Bell's Gap Railroad Co. v. Pennsylvania, have applied its principle to many varying instances. Granting the power of classification, we must grant government the right to select the differences upon

> which the classification shall be based, and they need not be great or conspicuous. Keeney v. New York, 222 U. S. 525, 536. The State is not bound by any rigid equality. This is the rule;—its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes.' See 223 U. S. 59, 62, 63. Thus defined and thus limited, it is a vital principle, giving to the government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those 'discriminations which the best interests of society require.'"

In the case of Atlantic Coast Line v. Goldsboro, 232 U. S. 548, at p. 558, this court said:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise." (Citing cases.)

To refer to other cases can, it seems to us, serve no good purpose. The rule, illustrated by the cases, is well settled. The legislative bodies of the municipalities, of the States and at least some of the members of the Federal Congress, as abundantly appears from the records of which this court takes notice, think there should be legislation on this subject. The people of the country are interested, they are directly affected, and they speak

through their law-making bodies in protest at the burdens placed upon them by this business.

The Legislatures have no trouble in classifying the business for legislative purposes. We submit that there is a just basis for the classification, that the act assailed is not in violation of the Federal Constitution, and that the court below was in error in so holding.

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Supreme Court of the United States

OCTOBER TERM, 1914.
No. 318.

JOHN W. RAST, TAX COLLECTOR FOR DUVAL COUNTY, STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

VAN DEMAN AND LEWIS COMPANY, ET. AL., APPELLEES.

Appeal from the District Court of the United States for the Southern District of Florida.

STATEMENT FOR APPELLEES OF AMENDMENT OF FLORIDA STATUTE SINCE APPEAL.

Since the appeal was taken in this case there has been a session of the Florida Legislature, to-wit: the regular session from April 6th, to June 4th, 1915, and at said session an Act was passed which amended Section 35 of Chapter 6421, Act of 1913, entitled An Act Imposing Licenses and Other Taxes, etc., which Section of said License Tax Act contained the provisions complained of in the Bill of Complaint. The Bill introduced in said Legislature of 1915 to amend said Act of 1913 as originally introduced abrogated and repealed all provisions imposing license taxes on merchants for using trading stamps as well as for using coupons, profit sharing certificates, etc., and the bill as so introduced also provided for removing, abrogating and terminating all liabilities, penalties, prosecutions and punishments under and because of any portions of said Section 35 repealed or omitted by such amendment. The Legislature, however, struck out all provisions to remove, abrogate and

terminate liabilities, prosecutions and punishments under or because of any portions of said Section 35 repealed or omitted as aforesaid, and also restored in the bill the license tax of $250.00 on merchants using trading stamps for each place of business where they use such stamps.

Chapter 6923, Acts of 1915, approved June 2nd, 1915.

The Constitution of the State of Florida provides that the repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.

Constitution of Florida, Article 3, Section 32.

The consequence, therefore, of the Legislature's refusing to enact a provision to remove, abrogate and terminate liabilities, penalties, punishments and imprisonments under or because of any portions of said Section 35 repealed or omitted by the amending act was that the amending act left the Appellees in this case and all other Florida merchants in similar situation exposed to innumerable prosecutions for every alleged violation of the Act of 1913, that is to say exposed to the dangers of being prosecuted, fined and imprisoned on account of every sale of any article of merchandise that any such merchant had made where the article contained or had attached any coupon, profit sharing certificate or the like or where the merchant had offered or given any coupon, profit sharing certificate, trading stamp or the like, which the merchants had been doing daily for about two years under the protection of the injunction in the United States District Court for the Southern District of Florida from which this appeal is taken. It remains necessary, therefore, that all the grounds upon which said injunction was granted should be considered and passed on by this Court and the injunctional order or decree be sustained in order to protect said merchants in their rights under the Constitution of the United States. Furthermore the Legislature having retained a provision taxing each merchant $250.00 license tax for each place of business where he uses trading stamps, all questions involving the validity of such provision remain before this Court and it is necessary for the protection of the rights of the Ap-

pellees that they be considered and determined by this Court and the injunction be sustained.

We give below, for the information of the Court, the said amendatory Statute of the State of Florida, the said Section of the Constitution of the State of Florida, and the citation of decisions of the Supreme Court of the State of Florida holding that the amendment or repeal of such a Statute does not prevent anyone from being prosecuted for acts done while the Statute was in force or existence.

CHAPTER 6923—(No 117).

AN ACT to amend Sections 30 and 35 of An Act Imposing Licenses and Other Taxes, Providing for the Payment Thereof, and Prescribing Penalties for Doing Business Without a License, or other failure to comply with the Provisions Thereof, Approved June 5th, 1913; and to Remove, Abrogate and Terminate all Liabilities, Penalties, Prosecutions and Punishments Under or Because of any portions of Said Section 35 Repealed or Omitted by Such Amendment.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That Section 30 of Chapter 6421, Acts of 1913, be and the same is hereby amended to read as follows:

"Section 30. Junk, dealers in, shall pay a license tax of fifty ($50.00) dollars, and shall keep a full and complete record of each transaction of their business showing from whom and when each article of their stock was purchased or acquired, and to whom sold and date of such sale, and such record shall at all times be subject to the inspection of all police or peace officers. Any violation hereof shall be punished by imprisonment in the county jail for not more than six months.

Job Printing. Owners or managers of job printing offices, running by power, in cities and town of ten thousand inhabitants or over, shall pay a license tax of ten ($10.00) dollars."

Section 2. That Section 35 of Chapter 6421, Act of 1913 be and the same is hereby amended so as to read as follows:

"Section 35. Merchants, Druggists and Storekeepers, shall pay a license tax as follows:

For the first one thousand ($1,000.00) dollars or fraction of one thousand dollars of stock of merchandise, three ($3.00) dollars in each county and for each place of business, and one and one-half ($1.50) dollars for each additional thousand or fraction thereof; but dealers in merchandise at wholesale only, shall pay a license tax of one and one-half ($1.50) dollars for each one thousand ($1,000.) dollars of their stock of merchandise. Provided, That the words 'stock of merchandise' shall be held to mean the cash value of merchandise or goods on hand and not the amount of capital stock invested in the business; Provided further that any merchant keeping sewing machines in stock for sale in the same manner as other merchandise shall not be taxed as a sewing machine agent or dealer.

Mercantile Agencies. Shall pay a license tax of fifty ($50.00) dollars in each county in which an office is established.

Merchants using trading stamps, shall pay a license tax of two hundred and fifty ($250.00) dollars for each place of business where they use such stamps.

Merchant tailors shall pay a license tax of ten ($10.00) dollars for each place of business."

Section 3. This Act shall go into effect immediately upon its passage and approval by the Governor.

Approved June 2, 1915.

The following is the provision of the Florida Constitution on the subject:

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 32. The repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment.

The following are the Florida decisions hereinbefore mentioned:

"2. Section 32 of Article III of the Constitution of 1885 provides that 'the repeal or amendment of any criminal statute shall not affect the prosecution or punishment of any crime committed before such repeal or amendment. The effect of this constitutional provision is to give to all criminal legislation a prospective effectiveness; that is to say, the repeal or amendment, by subsequent legislation, of a pre-existing criminal statute does not become effective, either as a repeal or as an amendment of such pre-existing statute in so far as offenses are concerned that have been already committed prior to the taking effect of such repealing or amending law. And a crime committed prior to the taking effect of a statute that amends or repeals the law violated by the commission of such crime stands for prosecution and punishment under the law that it violated at the time of its commission, notwithstanding the subsequent repeal or amendment of such law."

Raines v. State, 42 Fla., 141, 142, Head-Note 2.

Blue v. State, 32 Fla., 53.

Brown v. State, 31 Fla., 207.

Reynolds v. State, 33 Fla., 301.

As is shown by the Florida legislation, the provision of the Florida Constitution and the decisions of the Supreme Court of Florida, as hereinbefore quoted and cited, the status of this appeal is not affected by any subsequent legislation and all the questions involved in the suit and discussed in the briefs remain for the consideration and decision of this Honorable Court, and it is necessary that they should be considered and decided, as we respectfully submit fully appears from the quotations and citations above mentioned.

CHARLES M. COOPER,
Counsel and Solicitor for Appellees.